

**FRANCHISE AGREEMENT FOR THE COLLECTION, TRANSPORTATION,  
PROCESSING AND DIVERSION OF RECYCLABLE MATERIALS AND OTHER  
MATERIALS AND FOR THE COLLECTION, TRANSPORTATION AND DISPOSAL  
OF MUNICIPAL SOLID WASTE**

**BETWEEN**

**THE CITY OF LAKE FOREST**

**AND**

-----

**OCTOBER2013**

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**5.02 Transportation of Single Stream and Single Material Recyclable Materials.** Contractor shall transport and deliver for processing Single Stream Recyclable Materials and Single-Material Recyclables, and appropriate Bulky Goods to the City-approved Clean MRF identified in Attachment O. City Manager or his/her designee may designate different clean MRFs in the future if the Clean MRF becomes unavailable due to lack of required permits or other unforeseen events.....29

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**5.04 Transportation of Food Scraps.** Contractor shall transport and deliver all Food Scraps collected from Carts, Bins, Roll Off Boxes and Compactors pursuant to this Franchise to the City-

approved (insert type of facility) identified in Attachment R. The City Manager or his/her designee may designate a different (insert type of facility) in the future if said facility(ies) become unavailable due to lack of required permits or other unforeseen events.....30

**5.05 Transportation of Construction and Demolition Debris.** Contractor shall transport and deliver all Construction and Demolition Debris collected from Bins and Roll Off Boxes pursuant to this Franchise to the City-approved Construction and Demolition Debris Processing Facility(ies) identified in Attachment S. The City Manager or his/her may designate different Construction and Demolition Debris Processing Facilities in the future if said facility(ies) become unavailable due to lack of required permits or other unforeseen events.....30

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**6.04 MRF, Compost, Food Scrap and C/D Facility Operating Requirements.** Contractor shall operate the Clean Materials Recovery Facility, the Dirty MRF (if directed by City), the Compost Facility, the Food Scrap Processing Facility and Construction and Demolition Debris Processing Facility it owns in compliance with all applicable federal, state, regional and local laws and regulations and shall adhere to the requirements of all permits for each facility. If Contractor is using facilities it does not own, it shall be Contractor's responsibility to investigate and determine that said facilities are operating in compliance with all applicable laws, rules, and regulations and permit requirements. (Note: In the event City has directed implementation of a SSC MRF Route and

use of a Dirty MRF as described in Attachment B, City must have approved the use of the proposed Dirty MRF, and such approval shall only be given if the Dirty MRF meets the requirements of applicable law, including but not limited to Public Resources Code Section 42649 (b) (2) and all subsequent amendments, rules and regulations promulgated in furtherance thereof. If, at any time during the Term, said facilities are not operating in compliance with all legal requirements, it shall be the duty of Contractor to immediately report the situation to the City. Upon receipt of such information, City may conduct an independent investigation of the situation, may require Contractor to utilize a different facility while City is conducting its investigation, or may take other actions City deems reasonable and necessary to protect the interest of the City, its customers, public health and safety and the environment. ....35

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**6.07 Reporting of Annual Diversion Rate Achieved.** On or before March 15, 2015, and on or before March 15 in all subsequent years of the Term, Contractor shall report to City the Annual Diversion Rate for the preceding calendar year, including copies of all reports from the County of Orange and CalRecycle, all Processing Facilities and Transformation Facilities and all other records used as source documents for the Tons collected, processed and Disposed by Contractor for the prior calendar year. Contractor's report shall include a list of all Tons of MSW Disposed by Contractor at Disposal facilities, and shall include Residue from all Processing Facilities utilized by Contractor including but not limited to Clean and Dirty MRFs, Compost Facilities, Food Scrap Processing Facilities, Construction and Demolition Debris Processing Facilities and Transformation Facilities. The report will show the total Tons from City that have been Disposed. The report will also list the total Tons of MSW, Single-Material Recyclables, Single Stream Recyclable Materials, Yardwaste, Food Scraps, Construction and Demolition Debris and all other materials Collected from within City by Contractor, and the total number of Tons of said materials. Said report shall show the total number of Tons collected and diverted in each of the following categories: (a) Single Family residential, (b) Multi-Family residential, (c) Commercial and Business Establishments, and (d) Roll Off Box service. For purposes of this report Roll Off shall include both permanent and

temporary Bins and Roll Off Box service, Collection of Compactors of ten (10) cubic yards or larger in size, and Collection of Construction and Demolition Debris. The report shall show the annual Diversion rate calculation as described in Section 6.06 herein and the resulting percentage of Tons disposed, as shown in Attachment BB. Late submittal of the annual diversion report shall result in the assessment of liquidated damages as listed in Section 13.09 D. Contractor shall provide a written response to any questions from City concerning the Diversion calculations and shall, if requested, meet with City to discuss the calculations, the underlying tonnage reports, and any other related issues. If requested by City, Contractor shall supply all additional documentation required to substantiate the Diversion rate calculation to the satisfaction of City. If requested, Contractor shall make available its personnel, consultants and other Persons who performed the Diversion rate calculations or prepared the tonnage reports used therein, to respond to questions from City or City's agents concerning the calculations. Contractor must provide explanations for and substantiation of all tonnages used in the Diversion Rate calculations including tons of materials delivered to transfer stations, materials recovery facilities, waste-to-energy and transformation facilities, construction and demolition waste processing facilities, composting facilities and Disposal Facilities. Any discrepancies in reported tonnages will be investigated by the City and must be resolved to the satisfaction of the City. No exceptions will be allowed to these reporting requirements. In the event Contractor fails to substantiate discrepancies in reported tons to the City's satisfaction by May 15 of any year, the annual adjustment of Contractor's rates described in Section 12.03 shall not occur for the period of July 1 through the following June 30 (a period of one year). If Contractor subsequently complies with all requirements of this Section 6.07, regular annual rate adjustments will resume the following year. However, in such event, the difference in the listed indexes shall be calculated only for the regular twelve month period as described in Attachment J, and shall not "look back" to the prior year, for which Contractor does not receive the annual adjustment. (By way of example, if Contractor's tonnage discrepancy for calendar year 2015 is not resolved to the satisfaction of the City by May 15, 2016, the annual rate adjustment scheduled for July 1, 2016 shall not occur.) Falsification of any tonnage record, negligent or intentional submittal of misleading or false information concerning the Tons Collected, processed, or Disposed, or use of false or misleading information in the Diversion calculation, shall be considered a material breach of this Franchise and grounds for immediate termination of Contractor's services by City. .38

**6.08 Diversion Incentive.** Contractor may earn up to two (2) one-year extensions of the Franchise Term, as described herein. ....41

**6.09 Marketing of Recovered Materials, Compost and Other Products.** Contractor shall be responsible for marketing, or arranging for the marketing, of all Recovered Materials, all Compost product(s) and all other products, including but not limited to Anaerobic Digestate, biochar, methane, compressed natural gas, other marketable gas products and electricity generated or produced from the Processing Facilities utilized to process materials collected in City, including the Materials Recovery Facilities, Compost Facility, Food Scraps Processing Facilities and the Construction and Demolition Debris Processing Facility. ....44

**6.10 Limits on Modes of Disposition.** City may direct Contractor to stop delivering Recovered Materials for uses that do not qualify as Diversion for purposes of the Act. No Recyclable Materials or other materials, which have been delivered to the Materials Recovery Facility, Compost Facility, Food Scrap Processing Facility or Construction and Demolition Processing Facility, shall be used for Alternative Daily Cover at solid waste landfills. No MSW of any kind may be disposed of on land at any location other than by delivery to the City designated landfill. No MSW of any kind may be disposed of in water or in the atmosphere. ....45

**6.11 Biomass and Transformation.** The Act allows City to utilize either Biomass or Transformation to divert up to ten percent (10%) of the fifty percent (50%) mandated annual diversion under the Act. (By way of example, if the City's wastestream consisted of one hundred



thousand (100,000) tons, then fifty percent (50%) diversion would mean that fifty thousand (50,000) tons were diverted. Ten percent (10%) of the fifty percent (50%) diversion would mean that tons Diverted by Biomass and Transformation could not exceed ten thousand (10,000) tons per year). If any of the Processing Facilities utilized by contractor to process Recyclable Materials or MSW pursuant to this Franchise, plan to use Biomass or Transformation for any of City's materials, (excluding those facilities listed in Attachment T) Contractor shall first submit to City a request to do so, including all pertinent information on the facilities to be used, the quantity of material to be processed, copies of permits for the facilities and all other information as may be requested by City. Contractor shall not proceed with use of Biomass or Transformation facilities that are not listed in Attachment T, unless Contractor has received written approval from City to do so. If approved by City, Contractor shall adhere to any conditions or restrictions that City may include with its approval.....45

**6.12 City Access to Processing Facilities.** In addition to City's rights under other provisions of this Franchise, City and its agents shall have the right at all reasonable times to enter each of the Processing Facilities to (a) observe operations, (b) observe compliance with permit requirements, (c) observe tonnage allocation and tonnage tracking procedures, and (d) for any other reasonable purpose.....46

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**8.03 City Access to Billing Information.** Contractor shall provide City with prompt access to all current and up-to-date billing information necessary to allow the City to respond to customer inquiries or complaints or as otherwise required by City. At request of City, Contractor shall provide "read only" electronic access to Contractor's Customer billing records such that City employees can research billing inquiries and Customer account history from City Hall. Contractor shall cooperate with City to establish this "read only" function and shall ensure that City has access to Customer billing information in "real time" .....61

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a third-party designated by City The accuracy of all required reports to be submitted by Contractor are of paramount importance to City. Such reports show how Contractor is tracking and allocating diverted Tons, disposed Tons, residue Tons and Tons delivered to, and marketed from, Processing Facilities. The number of Tons diverted and disposed directly impacts both the City's Diversion rate as calculated by the Act, and the City's costs of Diversion and of compliance with the Act. Therefore, City may take all necessary steps and actions to audit, analyze and review any tonnage discrepancies or any other discrepancies, in Contractor's calculations, allocations, tonnage tracking and submitted documentation and records. ....68

In the event that City discovers any material discrepancy in Contractor's reported Diversion or Tonnages, City will notify Contractor and Contractor shall have fourteen (14) calendar days to explain or otherwise resolve the discrepancy or discrepancies to the satisfaction of City. If there remains any doubt or question about the accuracy of Contractor's calculations, allocations, documentation or disposition of Tons of MSW, Recyclable Materials, Yardwaste, Food Scraps, Construction and Demolition Debris or any other materials, City may undertake a detailed examination of all information, documentation, calculations and other data. ....68

Contractor shall reimburse City's actual costs up to fifty thousand dollars (\$50,000) in each calendar year for such analysis, research, and review. Contractor shall cooperate fully with City's efforts and shall provide in a timely manner all additional City-requested documentation, information, and records (both electronic and hard copy) and shall provide access to all City requested documents and records both of Contractor and of the Processing Facilities used to process Tons Collected in City. ....69

City will invoice Contractor for the actual cost of the additional tonnage and allocation review and Contractor shall pay the invoice within thirty (30) days of receipt. In the event that Contractor fails to pay City's invoice within thirty (30) days of receipt, the liquidated damages listed in Section 13.09 for late payment shall apply. ....69

**9.06 Annual Route Audit.** Contractor shall conduct an annual audit, during the month of April of each year of this Agreement, of all Collection routes for MSW and Recyclable Materials including Yardwaste. The audit shall include, at a minimum: (i) the route number, (ii) identification number of vehicles servicing each route, (iii) number and type of accounts serviced by route and by truck, (iv) number and sizes of Containers collected together with the frequency of Collection by route and by truck, (v) weight of MSW collected, (vi) weights of Single-Material Recyclables, Single Stream Recyclable Materials, Yardwaste, Food Scraps, and SSC MRF Route materials (if directed by City) by route and by truck, and (vii) any pertinent operational details. Results of the route audit shall be delivered to City in their entirety, including, but not limited to, maps of routes with each route numbered, survey sheets, logs, route lists, forms used to gather information, and other similar documents, within ten (10) working days of completion of the audit, and in no event later than May 20 of each year of the Term. The initial audit shall be performed in April 2015 with the report due by May 20, 2015. Said audit may be undertaken directly by Contractor or on behalf of Contractor by another party, but in either event shall be completed at Contractor's sole expense. ....69

**9.07 Quarterly Diversion Allocation and Residue Audits at All City-Designated MRF's, Compost, Food Scrap Processing, Construction and Demolition Debris Processing, and Transformation Facilities.**

Contractor shall conduct quarterly audits, during the months of February, May, August, and November of each year during the term of this Agreement to establish an allocation method for calculating diversion of Recyclable Materials from the waste stream that are processed at Processing Facilities. The procedure to be followed in conducting said audits at each Processing Facility is included in Attachment N. The final audit report shall be submitted to City no later than the 15<sup>th</sup> day of the month following the month of the audit (e.g. by March 15 for the February audit). The first quarterly audit shall be conducted in August 2014. City shall have the right to have City staff or City's representatives present during any of the audits. Contractor

shall give City a minimum of fifteen (15) calendar days written notice of the date and time Contractor shall conduct the audit. The quarterly audits and the reports on same shall be prepared at Contractor's sole expense. The results of the allocation audit shall be put into use as of the first day of the month following submittal of the report to the City and approval of the report and allocation method by City, and shall be used at all applicable Processing Facilities to allocate City's materials for Diversion. .... 70

**9.08 Annual City Review of Allocation Audit Procedures and Results.** Each year of the Term, City shall have the right, but not the obligation, to conduct a review of the procedures used by Contractor to perform the allocation audits described in Section 9.07 and the results of said audits. If City desires to review the audit results and/or procedures, City will contact Contractor to schedule a meeting or series of meetings to discuss the procedures and results. At City's sole discretion, Contractor shall change the audit protocol, timing and frequency as directed by City and shall put such changes into effect with the next audit. City's review of audit procedures may include review of Contractor and Processing Facility records and on site visits to Contractors facilities and Processing Facilities. City's access to, and observation of activities and operations at each Processing Facility and at the Transformation Facility shall not be restricted or impaired in any way by Contractor..... 71

#### **ARTICLE 10. INDEPENDENT CONTRACTOR ..... 73**

**10.01 Contractor an Independent Contractor.** In the performance of services under this Franchise, the Contractor shall be, and is, an independent contractor, and is not an agent or employee of the City. Contractor has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all Persons assisting Contractor in the performance of Contractor's services hereunder. Contractor shall be solely responsible for all matters relating to the payment of its employees, including compliance with social security, withholding and all other regulations governing such matters, and shall be solely responsible for Contractor's own acts and those of Contractor's employees and other agents..... 73

**10.02 No Partnership or Joint Venture Created.** Nothing in this Franchise shall be construed as creating a partnership or joint venture between the City and Contractor, or as giving the City a duty to supervise or control the acts or omissions of any Person performing services or work under the Franchise. .... 73

**10.03 No Entitlement to City Benefits.** Neither Contractor nor its officers, employees, agents or subcontractors shall be entitled to any retirement benefits, workers' compensation benefits or any other benefits which accrue to any City employees, and Contractor expressly waives any claim it may have to acquire to such benefits. Contractor agrees to defend and indemnify City for any claims brought by Contractor's employees against City for such benefits. .... 73

#### **ARTICLE 11. INDEMNITY, INSURANCE, BOND..... 74**

**11.01 General Indemnification.** Contractor shall indemnify, defend and hold harmless City, its officers, employees and agents, from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit, of any and every kind and description, whether judicial, quasi-judicial or administrative in nature including, but not limited to, injury to and death of any person and damage to property or for contribution or indemnity claimed by third parties (collectively, the "Claims"), arising out of or occasioned in any way by, directly or indirectly, Contractor's performance of, or its failure to perform, its obligations under this Franchise. The foregoing indemnity shall not apply to the extent that the Claim is caused solely by the sole negligence or the intentional misconduct of City, its officers, employees or agents, but shall apply if the Claim is caused by the joint negligence of Contractor or other Persons. Upon the occurrence of any Claim, Contractor, at Contractor's sole cost and expense, shall defend (with attorneys reasonably

acceptable to City) City, its officers, employees, and agents. Contractor's duty to indemnify and defend shall survive the expiration or earlier termination of this Franchise. ....	74
<b>11.02 Insurance</b> .....	74
<b>11.03 Faithful Performance Bond.</b> Not later than October 1, 2013, Contractor shall file with City a bond securing the Contractor's faithful performance of its obligations under this Franchise. The principal sum of the bond shall be One Million Dollars (\$1,000,000). The form of the bond shall be as set out in Attachment L. The bond shall be executed as surety by a corporation admitted to issue surety bonds in the State of California, regulated by the California Insurance Commissioner and with a financial condition and record of service satisfactory to City. ....	80
<b>11.04 Alternative Security.</b> City may, in its sole discretion, allow Contractor to provide alternative security in the amount set forth in Section 11.03, in the form of (a) a prepaid irrevocable standby letter of credit in form and substance satisfactory to City and approved by the City Attorney and issued by a financial institution acceptable to City, or (b) a certificate of deposit in the name of the City with a term satisfactory to City and with a financial institution acceptable to City.	81
<b>11.05 Hazardous Waste Indemnification</b> .....	81
<b>11.06 Integrated Waste Management Act Indemnification.</b> The parties agree that Contractor's implementation of all programs in Attachment B is vital to the City's compliance with the Act. Therefore, Contractor agrees to indemnify and hold harmless the Indemnitees against all fines and/or penalties imposed by CalRecycle: (i) based on Contractor's failure to comply with laws, regulations or permits issued or enforced by CalRecycle or the City; (ii) caused or contributed to by the Contractor's failure to perform its obligations under this Franchise, including, but not limited to, implementation of all programs in Attachment B in the timeframes required. This indemnity obligation is subject to the limitations and conditions in Public Resources Code Section 40059.1 but is enforceable to the maximum extent allowable by that Section. In the event that CalRecycle imposes penalties, fees and/or sanctions against City, Contractor shall, in addition to paying the fines and penalties, pay all City's costs and fees for staff time, consultants, attorneys and all other costs of defending and resolving the issue of CalRecycle issuing fines, penalties and/or sanctions against City. ....	84
<b>ARTICLE 12. COMPENSATION TO CONTRACTOR</b> .....	85
<b>12.01 General.</b> Contractor shall perform the services required by this Franchise in consideration for: (i) the right to charge customers the rates set forth on Attachment D as they may be adjusted as provided in this Article, and (ii) the right to retain all revenues, if any, from the sale of Recyclable Materials, Yardwaste, Food Scraps (including revenue from creation, sale and use of energy) and Construction and Demolition Debris. The revenues received from these two sources shall be the full, entire and complete compensation due to Contractor for all labor, equipment, materials and supplies, taxes, insurance, bonds, overhead, profit and all other things necessary to perform all the services required by this Franchise in the manner and at the times prescribed. City shall not be obligated to make any payments to Contractor under this Franchise, including payments to compensate Contractor for delinquent or uncollectible amounts charged to Customers. ....	85
<b>12.02 Initial Rates.</b> The rates which Contractor may charge for services provided commencing May 1, 2014 shall be those set forth in Attachment D. These rates shall not be changed for the first fourteen (14) months of the Term, i.e., until July 1, 2015 and shall be quoted as May 2014 dollars. Rates are established to incentivize waste Generators to Divert as much MSW as possible in order to reduce their monthly collection bill. The initial rates are established to provide Collection of Single Stream Recyclable Materials and Single-Material Recyclable Materials at Business and Commercial Establishments at a cost that is fifty percent (50%) less than MSW Collection service.	85
<b>12.03 Annual Rate Adjustments.</b> The rates for service as set forth in Attachment D shall be adjusted as of July 1, 2015 and as of July 1 for each ensuing year of the Term (including any	

extensions pursuant to Section 6.08) in accordance with Attachment J, following completion of the proceedings required under Article 13D, Section 6 of the California Constitution, and contingent upon the City not receiving a majority protest against the rate increase as part of such proceedings.

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**12.04 Disposal Charge (Tip Fee) Adjustments.** If the tip fee charged at Orange County Landfills (or whatever City designated Disposal Site is then in use) is changed (increased or decreased) for whatever reason including, but not limited to, new or increased taxes or regulatory fees, the Disposal portion of the rates shall be adjusted according to the instructions provided in Attachment J, following completion of the proceedings required under Article 13D, Section 6 of the California Constitution, and contingent upon the City not receiving a majority protest against the rate increase as part of such proceedings. Disposal Charges are a pass through cost and Contractor shall not be entitled to receive or charge any profit, markup, overhead or administrative costs on Disposal Charges.86

**12.05 Franchise Fee.** In consideration of the rights granted to Contractor hereunder, and in order to offset the City's costs in administering this Franchise including, but not limited to, planning, monitoring, and implementation of additional Diversion programs, additional public education on Diversion programs, technical consulting assistance on solid waste, recycling and other related issues, preparation of any studies required by the City or by CalRecycle related to compliance with the Act, preparation of required reports and documentation under the Act, monitoring of Contractor's performance under this Franchise, and any other City costs related to compliance with the Act, Contractor shall pay to the City a fee equal to five percent (5%) of Contractor's gross revenues derived from providing services under this Franchise (the "Franchise Fee"). Contractor shall remit the Franchise Fee monthly, within 30 days of the end of the calendar month for which the Franchise Fee is paid. Any overpayment to the City through error or otherwise shall be offset against the next payment due from Contractor without interest. Acceptance by the City of any payment due under this paragraph shall not be deemed to be a waiver by the City of any breach of this Agreement, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due, or from collecting any balance due to the City. In case of dispute between the City and Contractor regarding any amounts due, Contractor shall pay the undisputed portion of the amount claimed by the City as due and notify the City in writing at the time of payment as to any payment that is paid under protest, specifying the basis of its claim of overpayment. In addition, City may, in its sole discretion, increase the Franchise Fee at any time during the Term, by approving a commensurate increase in the rates set forth in Attachment D that is over and above the increases described in Sections 12.03, 12.04, 12.07 and 12.08. If City chooses to increase the Franchise Fee in this manner City shall notify Contractor in writing of the amount of the change, and the effective date of the change. ....87

**12.07 Adjustments to Rates Based on City-Directed Changes In Scope of Work.** If the City has directed a change in the scope of work under Section 4.12 and either party believes that such change will increase or decrease the costs of providing service, the party which believes the rates should be adjusted shall, within thirty (30) calendar days after issuance of the notice of scope change, submit to the other party a proposed adjustment with complete supporting documentation of the cost calculations therein, and the parties shall thereafter meet and discuss the matter. City may request additional documentation, calculations and other information from Contractor in order to analyze information submitted by Contractor, or in order to make its own internal calculations of the cost change. Once the parties have formulated a cost adjustment, the City Council shall review the proposed adjustment and in the City Council's sole discretion, make the determination as to the appropriate amount of the adjustment. No adjustment will be made to reflect impacts on Contractor's profits arising from changes in the scope of work, only changes in Contractor's costs. ....88

**ARTICLE 13. DEFAULT AND REMEDIES ..... 91**

**13.01 Events of Default.** Each of the following shall constitute an event of default (“Contractor Default”) hereunder: ..... 91

**13.02 Right to Suspend or Terminate Upon Default.** ..... 93

**13.03 Specific Performance.** By virtue of the nature of this Franchise, the urgency of timely, continuous and high-quality service, the lead time required to effect alternative service, and the rights granted by City to Contractor, the remedy of damages for a breach hereof by Contractor is inadequate, and the City shall be entitled to injunctive relief to require Contractor to perform its obligations herein..... 94

**13.04 Use of Contractor Property Upon Default.** In the event that Contractor fails to perform any of its obligations under Articles 4, 5, 6 or 7 and fails to perform such work within two (2) business days after notice from City, City shall have the right to use any of Contractor’s land, equipment, facilities and other property reasonably necessary for the provision of services hereunder and the billing and collection of fees for those services. The City shall have the right to continue use of such property until other suitable arrangements can be made for the provision of such services, which may include the award of a contract to another service provider..... 94

**13.05 Right to Perform.** If this Franchise is suspended and/or terminated due to a Contractor Default, City shall have the right to perform and complete, by contract or otherwise, the work herein or such part thereof as it may deem necessary and to procure labor, equipment, and materials and incur all other expenses necessary for completion of the work and services provided for herein. If such expenses exceed the amounts which would have been payable to Contractor under this Franchise if it had been fully performed by Contractor, then Contractor shall pay the amount of such excess to City..... 95

**13.06 Payment for Use of Contractor’s Property.** If the City invokes its rights to use Contractor’s equipment, facilities, and other property pursuant to Section 13.04, and such use continues after the period of time for which Contractor has already been paid, Contractor shall be entitled to the reasonable rental value of such property, which shall be offset against the damages due the City as a result of Contractor’s Default. Contractor agrees that it will fully cooperate with the City to effect the City’s use of such property. The City may immediately engage all or any personnel necessary for the provision of services, including, if the City so desires, employees previously employed by Contractor. Contractor further agrees, if the City so requests, to assist the City in securing the services of any or all management or office personnel employed by Contractor whose skills are reasonably necessary for the continuation of services. The City agrees that it assumes complete responsibility for the proper, normal use of such equipment and facilities while in its possession. Contractor agrees that the City’s exercise of its rights under this section: (i) does not constitute a taking of private property for which compensation must be paid; (ii) will not create any liability on the part of the City to Contractor other than the payment of reasonable rental value as provided for in this subsection; (iii) does not exempt Contractor from the indemnity provisions of Article 11 which are meant to extend to circumstances arising under this Section. .... 95

**13.07 Damages.** Contractor shall be liable to City for all direct and consequential damages arising out of Contractor’s Default. This section is intended to be declarative of existing California law. The City may offset such damages against sums which would otherwise be due to Contractor.

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**13.08 City’s Remedies Cumulative.** City’s rights to suspend or terminate the Franchise under Section 13.02, to obtain specific performance under Section 13.03, to cure under Section 13.04 and to perform under Section 13.05 are not exclusive, and City’s exercise of one such right shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies that the City may have, including a legal action for damages, including incidental, consequential and/or special damages under Section 13.07..... 96



**13.09 Liquidated Damages.** The parties acknowledge that consistent, courteous and efficient Collection of MSW, Recyclable Materials, Yardwaste and Construction and Demolition Debris is of utmost importance and City has considered and relied on Contractor’s representations as to its quality of service commitment in entering into this Franchise. The parties further recognize that quantified standards of performance are necessary and appropriate to ensure consistent and reliable service. The parties further recognize that if Contractor fails to achieve the performance standards, City and its residents will suffer damages and that it is and will be impracticable and extremely difficult to ascertain and determine the exact amount of damages that City will suffer. Therefore, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Franchise, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and anticipation that proof of actual damages would be costly or inconvenient. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party had ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision at the time that this Franchise was made. ....96

**13.10 City Default.** City shall be in default under this Franchise (“City Default”) in the event City commits a material breach of the Franchise and fails to cure such breach within thirty (30) days after receiving notice from the Contractor specifying the breach, provided that if the nature of the breach is such that it will reasonably require more than thirty (30) days to cure, City shall not be in default so long as City promptly commences the cure and diligently proceeds to completion of the cure. 101

#### **ARTICLE 14. OTHER AGREEMENTS OF THE PARTIES ..... 102**

**14.01 Compliance with Law; Non-Discrimination.** In providing the services required under this Franchise, Contractor shall at all times comply with all applicable laws of the United States, the State of California and City, with all applicable rules and regulations promulgated by federal, state, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended during the Term and with all permits affecting the services to be provided. Contractor shall not discriminate nor permit discrimination against any Person in a manner prohibited by federal or state law. .... 102

**14.02 Assignment.** Contractor acknowledges that this Franchise involves rendering a vital service to the City’s residents and businesses, and that the City has selected Contractor to perform the services specified herein based on: (i) Contractor’s experience, skill and reputation for conducting their operations in a safe, effective and responsible fashion, and (ii) Contractor’s financial resources to maintain the required equipment and services and to support its indemnity obligations to the City under this Franchise. The City has relied on each of these factors, among others, in choosing Contractor to perform the services to be rendered by Contractor under this Franchise. .... 102

**14.03 Subcontracting.** Contractor shall not engage any subcontractors to perform any of the services required of it by this Franchise without the prior written consent of City. Contractor shall notify the City no later than ninety (90) days prior to the date on which it proposes to enter into a subcontract. City may approve or deny any such request in its sole discretion. .... 104

**14.04 No Affiliated Entity.** Contractor will not form or use any Affiliated Entity to perform any of the services or activities which Contractor is required or allowed to perform under this Franchise, other than as a subcontractor approved by City under Section 14.03. .... 105

**14.05 Contractor’s Investigation; No Warranties by City.** Contractor has made an independent investigation, satisfactory to it, of the conditions and circumstances surrounding the Franchise and the work to be performed by it, and the Recycling and Source Reduction programs now in effect in the City. .... 105



<b>14.06 Notice.</b> All notices, demands, requests, proposals, approvals, consents and other communications which this Franchise requires, authorizes or contemplates shall, except as provided in Section 13.02, be in writing and shall either be personally delivered to a representative of the parties at the address below or be deposited in the United States mail, first class postage prepaid (certified mail, return receipt requested), addressed as follows:.....	106
<b>14.07 Representatives of the Parties.</b> .....	106
<b>14.08 Right to Inspect Contractor Operations.</b> City shall have the right, but not the obligation, to observe and inspect all of the Contractor’s operations under this Franchise. In addition, upon reasonable notice and without interference with Contractor’s operations, City may review and copy any of Contractor’s operational and business records related to this Franchise. If City so requests, Contractor shall make specified personnel available to accompany City employees on inspections and shall provide electronic copies of records stored in electronic media.....	107
<b>14.09 Maintenance and Review of Records. Submission of Reports.</b> Contractor shall compile, on a daily basis, accurate records of its operations in sufficient detail to allow for accurate determinations of all matters that require periodic determination under this Franchise. City shall have the right during regular business hours to review and make copies of (at City’s expense) any documents relevant to this Franchise, including, but not limited to, Contractor’s billing and collection records, tonnage reports, route lists, maps and records maintained in electronic, magnetic and other media. ....	107
<b>14.10 Right to Demand Assurances of Performance.</b> If Contractor: (i) persistently suffers the imposition of liquidated damages under Section 13.09; (ii) is the subject of any labor unrest including work stoppage or slowdown, sickout, picketing or other concerted job action; (iii) appears in the reasonable judgment of City to be unable to regularly pay its bills as they become due; or (iv) is the subject of a civil or criminal proceeding brought by a federal, state, regional or local agency for violation of an Environmental Law, City may, at its option and in addition to all other remedies it may have, demand from Contractor reasonable assurances of timely and proper performance of this Franchise, in such form and substance as the City may require. ....	108
<b>14.11 Right of City to Permit and Franchise For Collection By Third Parties.</b> Pursuant to Public Resources Code Section 40105, City designates Contractor as City’s Authorized Recycling Agent. However, the parties acknowledge and agree that it is of vital importance to City that the Diversion programs described in Attachment B be implemented according to the timelines contained therein. Therefore if Contractor fails to achieve the minimum level of program implementation, as described herein, then the parties acknowledge and agree that from and after the date of such failure the City may (without Contractor’s approval) permit, authorize, allow, invite and/or contract with entities other than Contractor to collect, Recycle, Process and/or Dispose of Residue from Recyclable Materials, Yardwaste, and Food Scraps generated at Commercial and Business Establishments, Multi-family complexes and at other Premises, regardless of whether or not the customer pays for the Collection and Recycling of such materials.....	108
<b>14.12 Force Majeure.</b> Neither party shall be in default of its obligations under this Franchise in the event, and for so long as, it is impossible or extremely impracticable for it to perform its obligations due to an “act of God” (including, but not limited to, flood, earthquake or other catastrophic events), war, insurrection, riot, or other similar cause not the fault of, and beyond the reasonable control of, the party claiming excuse (each, a “Force Majeure event”). The following are not force majeure events: labor unrest, picketing, strikes, work stoppage or slowdown, sickouts or other concerted job actions. A party claiming excuse under this Section must (1) have taken reasonable precautions, if possible, to avoid being affected by the cause, and (2) notify the other party in writing within five (5) calendar days after the occurrence of the event specifying the nature of the event, the expected length of time that the party expects to be prevented from performing, and the steps which the party intends to take to restore its ability to perform. The party claiming	

excuse under this Section shall use its best efforts to remedy its inability to perform as quickly as possible. .... 110

**14.13 Cooperation During Transition.** At the expiration or earlier termination of the Term, Contractor shall cooperate fully with the City to ensure an orderly transition to any and all new service providers. In addition, during the last twelve months of the Term, Contractor shall allow prospective operators to observe its operations and shall make available to City all records and reports required to be submitted by this Franchise for use in the transition including, but not limited to, complete route lists and maps, customer account lists including customer name, address, type and frequency of service, billing information, and number, type and location of all Containers deployed by Contractor within City. .... 112

**14.14 No Damages for Invalidity of Franchise.** If a final judgment of a court of competent jurisdiction determines that this Franchise, or any portion thereof, is illegal or was unlawfully entered into by the City, neither party shall have any claim against the other for damages of any kind (including but not limited to loss of profits) on any theory. .... 112

**14.15 Diversion Programs Not Restricted.** Nothing in this Franchise shall restrict City's participation or non-participation, or the nature or extent of its participation in, any Recycling and Diversion program, developed or operated by City, other agencies, or by one or more residents, businesses, commercial, industrial or retail operators, or other Persons, within City or other jurisdictions. .... 113

**14.16 Reports as Public Records.** The reports, records and other information submitted (or required to be submitted) by Contractor to City are public records within the meaning of that term in the California Public Records Act, Government Code Section 6250 *et seq.* Unless a particular record is exempted from disclosure by the California Public Records Act, it must be disclosed to the public by the City upon request. .... 113

## **ARTICLE 15. MISCELLANEOUS Provisions** ..... 114

**15.01 Governing Law.** This Franchise shall be governed by, and construed and enforced in accordance with, the laws of the State of California. .... 114

**15.02 Jurisdiction.** Any lawsuits between the parties arising out of this Franchise shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits. With respect to venue, the parties agree that this Franchise is made in and will be performed in Orange County and the exclusive venue is the Superior Court located in Orange County. .... 114

**15.03 Binding on Successors.** The provisions of this Franchise shall inure to the benefit of and be binding on the successors and permitted assigns of the parties. .... 114

**15.04 Parties in Interest.** Nothing in this Franchise is intended to confer any rights on any Persons other than the parties to it and their permitted successors and assigns. .... 114

**15.05 Waiver.** The waiver by either party of any breach or violation of any provisions of this Franchise shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision. The subsequent acceptance by either party of any monies that become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other party of any provision of this Franchise. .... 114

**15.06 Attachments.** Each of the attachments, identified as Attachments "A" through "BB," is attached hereto and incorporated herein and made a part hereof by this reference. .... 114

**15.07 Entire Agreement.** This Franchise, including the Attachments, represents the full and entire agreement between the parties with respect to the matters covered herein and supersedes all prior negotiations and agreements, either written or oral. .... 115

<b>15.08</b>	<b><u>Section Headings.</u></b> The article headings and section headings in this Franchise are for convenience of reference only and are not intended to be used in the construction of this Franchise nor to alter or affect any of its provisions. ....	115
<b>15.09</b>	<b><u>Interpretation.</u></b> This Franchise shall be interpreted and construed reasonably and neither for nor against either party, regardless of the degree to which either party participated in its drafting. ....	115
<b>15.10</b>	<b><u>Amendment.</u></b> This Franchise may not be modified or amended in any respect except by a writing signed by the parties. ....	115
<b>15.11</b>	<b><u>Severability.</u></b> If a court of competent jurisdiction holds any non-material provision of this Franchise to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Franchise which shall be enforced as if such invalid or unenforceable provision had not been contained herein. ....	115
<b>15.12</b>	<b><u>Costs and Attorneys' Fees.</u></b> The prevailing party in any action brought to enforce the terms of this Franchise or arising out of this Franchise may recover its reasonable costs expended in connection with such an action from the other party. However, each party shall bear its own attorneys' fees. ....	115
<b>15.13</b>	<b><u>References to Laws.</u></b> All references in this Franchise to laws, rules, and regulations shall be understood to include such laws, rules, and regulations as they may be subsequently amended or recodified, unless otherwise specifically provided. In addition, references to specific governmental agencies shall be understood to include agencies that succeed to or assume the functions they are currently performing. ....	116
<b>15.14</b>	<b><u>City's Municipal Code.</u></b> Contractor is aware of the provisions of City's Municipal Code relating to the Collection and Disposal of solid waste, specifically Title 16 (Integrated Waste Management) of the Lake Forest Municipal Code, including the right of City to amend those provisions. Contractor shall comply with all provisions of Title 16, as they may be amended. ....	116

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**FRANCHISE AGREEMENT FOR THE COLLECTION, TRANSPORTATION,  
PROCESSING AND DIVERSION OF RECYCLABLE MATERIALS AND OTHER  
MATERIALS AND FOR THE COLLECTION, TRANSPORTATION AND DISPOSAL  
OF MUNICIPAL SOLID WASTE**

THIS FRANCHISE AGREEMENT is entered into as of the \_\_\_\_ day of October 2013, by and between the CITY OF LAKE FOREST, a municipal corporation (hereinafter referred to as the "City") and \_\_\_\_\_, a \_\_\_\_\_ (hereinafter referred to as "Contractor").

**RECITALS**

1. The State of California has found and declared that due to the amount of solid waste generated in California, coupled with diminishing landfill space and potential adverse environmental impacts from landfilling, that there is an urgent need for State and local agencies to enact and implement an aggressive integrated waste management program. The State has also found that the recycling or reuse of solid waste will conserve not only landfill capacity but also water, energy and other natural resources. The State has, through enactment of the California Integrated Waste Management Act of 1989 (California Public Resources Code Sections 40000 - 49000 hereinafter referred to as the "Act"), directed responsible State Agencies, and all local agencies, to promote Recycling and to maximize the use of feasible Source Reduction, Recycling and Composting options in order to reduce the amount of solid waste that must be disposed of by land Disposal.

2. The City concurs in the aforementioned findings and declarations of the State of California.

3. In 2011 AB 341 was approved and signed into law amending the Act. The AB 341 amendments make a legislative declaration that it is the policy goal of the State of California that not less than seventy-five percent (75%) of Solid Waste be source reduced, recycled or composted by the year 2020 and requires the California Department of Resources Recycling and Recovery (hereinafter referred to as "CalRecycle") to prepare a plan for submittal to the legislature on or before January 1, 2014 on the methods to accomplish this goal. AB 341 requires all businesses generating four (4) or more cubic yards of Solid Waste per week, and all Multi-family dwellings consisting of five (5) units or more, to arrange for Recycling services on or before July 1, 2012; and requires all local agencies to provide a commercial recycling program meeting specified criteria on or before July 1, 2012.

4. The City wishes to arrange for the operation and expansion of its existing Recycling programs and implementation of new comprehensive Recycling and other Diversion programs for single and Multi-family Residential Premises, Commercial and Business Establishments and other operations in the City, which entails the Collection of Single Stream Recyclable Materials, Single-Material Recyclable Materials, Yardwaste, Food Scraps, Construction and Demolition Debris and other materials and the delivery of these materials for processing and Diversion at Materials Recovery Facilities, Compost Facilities, Construction and Demolition Debris Processing Facilities and other Processing Facilities. These Recycling, Composting and other Diversion

programs are integral and important components of the City's strategy for complying with the Act and are, therefore, of paramount importance to the City.

5. In June 2013, the City authorized issuance of a Request For Proposals For the Collection, Transportation, Processing and Diversion of Recyclable Materials and other materials and for Collection, Transportation and Disposal of Municipal Solid Waste. The City has evaluated all proposals submitted and has determined that the Contractor has proposed to provide such services in a manner and on terms which are in the best interests of the City, its residents and businesses, taking into account the qualifications and experience of the Contractor, the Contractor's demonstrated commitment to Recycling and Diversion of materials from Disposal, and the cost of providing such services.

NOW, THEREFORE, in consideration of the mutual promises contained in this Franchise Agreement, and for other good and valuable consideration, the parties agree as follows:



## **AGREEMENT**

## **ARTICLE 1. DEFINITIONS**

**1.01 Definitions.** Unless otherwise defined in this Franchise, capitalized terms used in this Franchise shall have the meanings set forth in the definitions contained in Attachment A, attached hereto and incorporated herein by this reference.

## **ARTICLE 2. REPRESENTATIONS AND WARRANTIES OF CONTRACTOR**

**2.01 Legal Status.** Contractor is a \_\_\_\_\_, duly organized, validly existing and in good standing under the laws of the State of \_\_\_\_\_, and is qualified to do business in the State of California.

**2.02 Authority.** Contractor has the authority to enter into and perform its obligations under this Franchise. Contractor has taken all actions required by law, or otherwise to authorize the execution of this Franchise.

**2.03 Franchise Duly Executed.** The Persons signing this Franchise on behalf of Contractor have been authorized to do so, and this Franchise constitutes a legal, valid and binding obligation of Contractor.

**2.04 No Conflict with Applicable Law or Other Documents.** Neither the execution and delivery by Contractor of this Franchise, nor the performance by Contractor of its obligations hereunder: (i) conflicts with, violates or will result in a violation of any existing applicable law; or (ii) conflicts with, violates or will result in a breach or default under any term or condition of any existing judgment, order or decree of any court, administrative agency or other governmental authority, or of any existing contract or instrument to which Contractor is a party, or by which Contractor is bound.

**2.05 No Litigation.** There is no action, suit, proceeding, or investigation at law or in equity, before or by any court or governmental entity, pending or threatened against Contractor, or otherwise affecting Contractor, wherein an unfavorable decision, ruling, or finding, in any single case or in the aggregate, would materially adversely affect Contractor's performance hereunder, or which, in any way, would adversely affect

the validity or enforceability of this Franchise, or which would have a material adverse effect on the financial condition of Contractor.

**2.06 Financial Condition.** Contractor has made available to City information on its financial condition. City has relied on this information in evaluating the sufficiency of Contractor's financial resources to perform this Franchise. To the best of Contractor's knowledge, this information is complete and accurate, does not contain any material misstatement of fact and does not omit any fact necessary to prevent the information provided from being materially misleading.

**2.07 Expertise.** Contractor has the expertise and professional and technical capability to perform all of its obligations under this Franchise.

**2.08 Contractor's Investigation.** Contractor has made an independent investigation and analysis, the results of which are satisfactory to Contractor, of the conditions and circumstances surrounding the Franchise, its content and preparation, and the work to be performed by Contractor under the Franchise. The Franchise accurately and fairly represents the intentions of Contractor, and Contractor enters into this Franchise on the basis of that independent investigation and analysis.

**2.09 Statements and Information in Proposal.** The Proposal submitted to City by Contractor and information submitted to City supplementary thereto does not contain any untrue statement of a material fact nor omit to state a material fact necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading. Contractor's Proposal is attached hereto as Attachment Y.

### **ARTICLE 3. TERM OF AGREEMENT**

**3.01 Effective Date.** The Effective Date of this Agreement shall be \_\_\_\_\_, 2013.

**3.02 Term.** The Term of this Franchise shall commence on the Effective Date and shall end at midnight on April 30, 2022, unless earlier terminated. Contractor's obligation to collect Recyclable Materials, other materials, and Municipal Solid Waste shall begin on May 1, 2014 at 12:01 a.m.

**3.03 Option to Extend Term.** The Term of this Franchise may be extended as described in Section 6.08. In no event shall this agreement be extended beyond April 30, 2024.

**3.04 Conditions to Effectiveness of Agreement.**

**A. Obligation of City to Perform.** The obligation of the City to perform under this Franchise is subject to satisfaction, on or before the Effective Date, of each of the conditions set out below, each of which may be waived in whole or in part by City:

1. **Accuracy of Representations.** The representations and warranties made by Contractor in Article 2 of this Franchise shall be true and correct on and as of the Effective Date.

2. Absence of Litigation. There shall be no litigation pending on the Effective Date in any court challenging the execution of this Franchise or seeking to restrain or enjoin its performance.

3. Furnishing of Bond and Guaranty. Contractor has furnished the performance bond required by Section 11.03 and the guaranty required by Section 15.16, meeting the requirements of this Franchise.

4. Furnishing of Evidence of Insurance. Contractor has furnished satisfactory evidence of insurance required by Section 11.02.

5. Effectiveness of City's Approval. The approval of this Franchise by City shall have become effective, pursuant to California law, on or before the Effective Date.

6. Reimbursement of City Procurement Costs. Concurrent with executing this Agreement, Contractor shall have paid to City the sum of \$84,700 to reimburse City for its costs for conducting the competitive procurement process for this Franchise Agreement.

City may waive the satisfaction of the conditions described in Section 3.04.A.3 and 4, allow this Franchise to become effective, and exercise its rights and remedies under this Franchise for Contractor's failure to furnish the bond, the guaranty, or the evidence of insurance.

**B. Obligation of Contractor to Perform.** The obligation of Contractor to perform under this Franchise is subject to the satisfaction on or before the

Effective Date of both of the conditions set forth below, each of which may be waived in whole or in part by Contractor.

1. Absence of Litigation. There shall be no litigation pending on the Effective Date in any court challenging the execution of this Franchise, or seeking to enjoin its performance.

2. Effectiveness of City's Approval. The approval of this Franchise by the City shall have become effective, pursuant to California law.

**C. Notice.** If either party wishes to assert that a condition for its benefit has not been satisfied and has not been waived, it must deliver written notice to that effect to the other party on the Effective Date. If no such notice is received, the Franchise will become effective on the Effective Date.

Each party is obligated to perform in good faith the actions, if any, which this Franchise requires it to perform before the Effective Date and to cooperate towards the satisfaction of the conditions set forth above.



**ARTICLE 4. COLLECTION OF RECYCLABLE MATERIALS, YARDWASTE, FOOD  
SCRAPS, OTHER MATERIALS AND MUNICIPAL SOLID WASTE**

**4.01 Scope of Work – General.** Except as otherwise provided herein, Contractor shall (a) collect Municipal Solid Waste generated at Residential Premises, Commercial and Business Establishments (including, among other things, City facilities), Multi-family dwellings, and Special Events within the City and deliver it to the Disposal Site approved by City, and (b) collect Recyclable Materials, and other items specified in Attachment B placed for Collection by participating residential Customers, Commercial and Business Establishments (including, among other things, City facilities), Multi-family dwellings, and Special Events within the City and deliver the materials to the Materials Recovery Facility, and/or Compost Facility, and/or (*insert other type(s) of facility(ies) if applicable*) and/or Construction and Demolition Debris Processing Facility designated by City. Notwithstanding the foregoing, the City does not guarantee that any particular type or quantity of Municipal Solid Waste, Recyclable Materials, or any other material will be available for Collection at any time during the term of this Franchise. Contractor acknowledges that the City cannot control the entire waste stream generated in Lake Forest, and cannot compel generators of certain materials to place those materials for collection by Contractor. Contractor further acknowledges that future changes in laws, regulations, and/or technology may affect the type and quantity of material that will be available for Collection by Contractor, and agrees that it will not be entitled to any rate increases, Franchise extensions, or other compensation of any kind due to such changes in types and quantities of materials available for Collection. The City shall have no obligation to affirmatively defend

Contractor's rights granted under this Agreement, but shall reasonably cooperate with Contractor, at Contractor's expense, in Contractor's efforts to defend its rights.

The work to be done by Contractor includes the furnishing of all labor, supervision, equipment, materials, supplies, vehicles and equipment, storage and maintenance facilities, and all other items necessary to perform the services required under this Franchise in a thorough, workmanlike and efficient matter, so that residents, businesses and public and private institutions within the City are provided reliable, courteous and high-quality services at all times. The enumeration of, and specification of, requirements for particular items of labor or equipment shall not relieve Contractor of the duty to furnish all others that may be required, whether enumerated or not.

Contractor shall perform all work in accordance with Attachment B, all provisions of which are incorporated herein by this reference, whether or not such provisions are specifically referred to in any other section of this Franchise. In addition, to the extent that Contractor's proposal includes promises to perform services in addition to, or at a higher standard of service than those required by the Request for Proposals, those promises are incorporated into this Franchise and Contractor hereby ratifies its agreement to perform as promised.

When implementing all of the Diversion programs described in Attachment B, Contractor shall follow the CalRecycle Diversion hierarchy as specified in Public Resources Code Sections 40051 and 40196 as follows: Source Reduction, reuse of materials for other purposes which avoid Disposal (not listed in Public Resources Code), Recycling and Composting, environmentally safe Transformation, and environmentally safe Landfill (Disposal). Contractor shall also implement programs and

utilize Processing Facilities in order to obtain the highest and best use for Diverted materials (e.g. Yardwaste shall be composted and used for landscaping applications rather than being chipped or ground and used for alternative daily cover at landfills unless directed otherwise by the City). Contractor shall (a) follow the CalRecycle hierarchy and (b) obtain the highest and best use for Diverted materials, to the satisfaction of the City.

The City has approved the plans for several large residential developments (some of which contain Commercial and Business Establishments), as described in Attachment U (Planned Residential and Commercial Development), and incorporated herein by this reference. Contractor shall provide all of the services described in this Franchise to the new Residential Premises, as well as to any and all Commercial and Business Establishments (including, but not limited to, City facilities), Multi-family dwellings, and Special Events in these new developments as the new developments are constructed and occupied during the Term. The timeframes for occupancy of the new developments were provided to the City by the developer(s) of each project. City makes no warranty or guarantee that any of the projects will be constructed. City further makes no warranty or guarantee that if constructed, the projects will contain the number(s) or type(s) of Residential Premises and Commercial Business Establishments contained in Attachment U. City further makes no warranty or guarantee that any of the Residential Premises or Commercial Business Establishments will be occupied at the time(s) listed in Attachment U.

**4.02 Implementation Plan.** The parties recognize that substantial planning and preparation will be required to ensure a successful initiation of Collection operations

by Contractor on May 1, 2014. To that end, Contractor has prepared a detailed Implementation Plan addressing the steps Contractor will take, and the schedule on which it will take them, to prepare for commencement of Collection operations. The Implementation Plan covers Contractor's schedule (shown on a week-by-week basis) for hiring and training of personnel, acquiring necessary Collection vehicles and equipment, preparing Customer relations materials (including Collection schedules, route maps, billing forms, complaint forms, service request forms and so forth), distributing new MSW, Recycling, Yardwaste and Food Scrap Containers to Customers, is attached as Attachment C (Implementation Plan), and incorporated herein by this reference.

Contractor shall diligently adhere to the Implementation Plan and shall meet periodically, whenever City requests, to review its progress. Failure to adhere to the Implementation Plan, including its schedule, shall constitute a breach of this Franchise which, if uncured, shall constitute a default under Section 13.01.

The specific plans and other materials required to be submitted under the Implementation Plan are subject to City's review and approval. City will endeavor to take actions, make decisions, and provide directions to Contractor in accordance with the schedule and time allowances set forth in Attachment C, so as not to delay Contractor's adherence to the Implementation Plan schedule.

#### **4.03 Residential MSW Collection.**

**A. Regular Collections.** Contractor shall collect all MSW generated at Residential Premises within the City and placed for Collection at curbside, and at sideyard/backyard locations by Customers who request such Collection under Section

2.05.1 of Attachment B. MSW shall be collected from such Premises at the frequencies and in the manner described in Attachment B, Section 2.

**4.04 Commercial/Business MSW Collection.** Contractor shall collect all MSW generated at Commercial and Business Establishments within the City and placed for Collection. MSW shall be collected from such Premises at the frequencies and in the manner described in Attachment B, Section 3.

**4.05 City Events MSW Collection.** Contractor shall collect all MSW generated at up to twenty (20) City-sponsored Special Events per calendar year during the term of this Agreement at no charge to the City as described in Section 3.13 of Attachment B.

**4.06 Diversion Programs.**

**A. Residential Recycling.** The Contractor shall collect Recyclable Materials, Yardwaste (and Food Scraps if directed by City) generated at Residential Premises placed for Collection in Contractor- provided Containers at the curbside. Contractor shall also collect Single Stream and Single-Material Recyclable Materials, Yardwaste (and Food Scraps if directed by City) generated at Residential Premises, placed for Collection at curbside and backyard or sideyard locations by Customers who request backyard or sideyard Collection under Section 2.05.1 of Attachment B.

Recyclable Materials shall be collected from Residential Premises at the frequencies and in the manner described in Attachment B, Section 2.

**B. Commercial/Business Recycling.** Contractor shall collect Recyclable Materials, Yardwaste and Food Scraps from participating Commercial and

Business Establishments at the frequencies and in the manner described in Attachment B, Section 3. Contractor shall also provide Containers and Collection service for Recyclable Materials and Food Scraps for up to twenty (20) special events sponsored by the City per calendar year as described in Section 3.03 of Attachment B.

**4.07 Other Services and Special Services.**

**A. Other Services.** Contractor shall provide other Collection services as requested by Customers in the City on an on-call basis, including Bin, Roll Off Box and Compactor service described in Attachment B, Section 3.

**B. Special Services.** Contractor shall provide special services as described in Attachment B that include, but are not limited to:

- Bulky Goods Collections
- Special Events Collections
- Holiday Greenery Collection and Recycling
- Holiday Greenery Drop Off and Recycling
- Electronic Waste and Universal Waste Collection and Recycling
- Electronic Waste, Universal Waste and Household Hazardous Waste Drop Off Events
- Collection and Recycling of Bulky Goods containing Freon

**4.08 Hours of Collection.** Collection of MSW and/or Recyclable Materials may occur only within the hours authorized by the City. Contractor may not collect MSW or Recyclable Materials earlier than 7:00 a.m. local time or later than 6:00 p.m. for

Residential Premises, and no earlier than 7:00 a.m. local time or later than 6:00 p.m. for Commercial and Business Establishments. The City Manager or his/her designee if requested by Contractor may grant temporary site and route-specific exceptions. At the sole discretion of the City Manager, Contractor shall adjust the early morning start point of Collection routes to address and minimize customer complaints when warranted and practicable.

No Collections shall occur on the following days: January 1, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and Sundays. No Collections shall occur on Saturdays for Residential Premises except for missed pick-up service and for a holiday that falls on a preceding Friday. When a holiday falls on a weekday, Collection service will be performed on the following day. For example, if a holiday falls on a Monday, service scheduled for Monday will be provided on Tuesday, service scheduled for Tuesday on Wednesday and so on. If a holiday falls on a Saturday, service will be provided the following Monday.

Contractor shall coordinate with the City Manager or his or her designee to ensure that the Collection of MSW, Yardwaste, Food Scraps and/or Recyclable Materials is compatible with, and does not interfere with, City's street sweeping operations.

#### **4.09 Collection Standards.**

**A. Care of Property.** Contractor shall use due care when handling MSW, Recycling, Food Scrap and Yardwaste Containers. Containers shall not be



thrown from trucks, roughly handled, damaged or broken. Containers shall be returned to the Collection point upright, with lids properly closed.

Contractor shall ensure that its employees close all gates opened by them in making Collections, unless otherwise directed by the Customer, and avoid crossing landscaped areas and climbing or jumping over flower beds, hedges, fences, and other building appurtenances.

City shall refer complaints about damage to private property, including common areas in common-area subdivisions, to Contractor. Contractor shall promptly and at its sole expense repair, or arrange for the repair of, all damage to private property caused by its employees, including but not limited to vehicles, overhangs, carports, streets, curbs, sidewalks, paved areas.

**B. Noise.** All Collection operations shall be conducted as quietly as possible and shall conform to City noise level regulations. The noise level during the stationary compaction process shall not exceed 75 decibels at a distance of 25 feet from the Collection vehicle measured at an elevation of five (5) feet above ground level. Contractor shall submit to City, upon City's request, a certificate of vehicle noise testing by an independent testing facility of a representative sample of Collection vehicles. The City may also conduct random checks of noise emission levels to ensure such compliance.

**C. Private and Public Streets.** Contractor shall use its best efforts to prevent damage to all streets over which its Collection equipment may be operated, and Contractor shall obtain all required approvals for operation of its Collection vehicles on

private streets. In the event Contractor damages public streets to an extent that exceeds normal wear and tear (e.g. hits and damages a public curb, sidewalk, or driveway or creates a hole in the pavement that must be repaired) City will notify Contractor and Contractor shall be responsible for the cost of repairing the damage, which will be performed by City. Contractor shall comply with all requirements for placement of Containers, including Roll Off Boxes in the public right of way, including compliance with encroachment permits pursuant to Lake Forest Municipal Code. Contractor shall use its best efforts to prevent spills of fuel, fluids (such as oil, hydraulic fluid, brake fluid, etc.) on streets, and if such a spill occurs, Contractor shall immediately notify the City (including the Director of Public works or his/her designee and the City's NPDES Coordinator) and all proper regulatory authorities of said spill and release of fluids, and shall clean, at Contractor's expense, the spilled fluids in coordination with, and to the satisfaction of, City and applicable regulatory agencies. Upon a release of such fluids, the driver shall immediately park the vehicle and it shall remain parked until the leak is repaired. In such event Contractor shall not park the leaking vehicle within two hundred (200) feet of a storm drain and shall utilize absorbent material, sand bags or other appropriate means to prevent leaking fluids from entering storm drains. In the event of any type of spill or other emergency, Contractor shall be responsible for securing the immediate safety of the vehicle driver, all other employees of Contractor and all persons and property in the surrounding vicinity.

**D. Customer Privacy.** Contractor shall strictly observe and protect the rights of privacy of Customers. Information identifying the contents and composition of a Customer's MSW, Recyclable Materials, Yardwaste or Food Scraps shall not be

revealed to any Person, governmental unit, private agency or company, unless authorized by the Customer or by order of a court of law, or by statute. This provision shall not be construed to prohibit Contractor from preparing, participating in, or assisting in the preparation of solid waste characterization studies and waste stream analyses that may be required by the Act, or in performing the audits required pursuant to Section 9 herein or providing information necessary for City to comply with the Act and to obtain information required for City to exercise its police powers. Contractor shall not market or distribute customer mailing lists to any party except the City.

#### **4.10 Litter Abatement.**

**A. Minimization of Spills.** Contractor shall use due care to prevent MSW, Yardwaste, Food Scraps and Recyclable Materials from being spilled or scattered during the Collection or transportation process. If any MSW, Yardwaste, Food Scraps or Recyclable Material is spilled, Contractor shall promptly clean up all spilled materials whether on private or public property. Each Collection vehicle shall carry a broom and shovel at all times for this purpose.

Contractor shall not transfer loads from one vehicle to another on any public street or private roadway, unless it is necessary to do so because of mechanical failure or damage to a Collection vehicle that renders it inoperable and the vehicle cannot be towed.

**B. Clean Up of Existing Litter.** The Contractor shall clean up existing litter in the immediate vicinity of any MSW, Recyclable Materials Food Scrap or Yardwaste Collection area (including the areas on private and public property where

Containers are delivered for Collection) whether or not Contractor has caused the litter. Contractor shall notify the Customer and the City after the second occurrence of existing litter and shall send City a photograph of the littered area. City's Code Enforcement Officer and one of the Contractor's Recycling Coordinators will make an on site inspection to discuss the situation with the Customer and/or property owner or manager responsible for the property. If the litter and debris is being caused by illegal dumping, the City and the Recycling Coordinators will work with the property owner and manager to utilize locked enclosures or Bins with locking lids to prevent entry. If the cause of the litter is under-subscription to the Collection service, the City and Recycling Coordinators will work with the Customer and/or property owner or manager to determine the appropriate size Container(s) and frequency of Collection required to alleviate the problem.

**C. Clean Up of Illegal Dumping.** Contractor shall respond to all calls from City regarding spilled or illegally dumped MSW, Yardwaste, food Scraps, Recyclable Materials, or Bulky Items that are identified in locations other than Customer MSW enclosures (such as empty parking lots, on City streets, etc.) during regular work hours and, in emergencies, at night and on weekends. Contractor shall collect and deliver such material to the City designated Disposal Facility (or, in the case of Recyclable Materials, to the City-designated MRF, Compost Facility, or Construction and Demolition Debris Processing Facility) provided such material does not exceed in volume the amount that can be collected by a two-person crew utilizing a pick up truck or Collection vehicle.

**D. Covering of Loads.** Contractor shall place covers on all open debris Containers and transfer trucks during transport to the Disposal facility, Materials Recovery Facility, Compost Facility, Construction and Demolition Debris Processing Facility, Transformation Facility and all other Processing Facilities.

#### **4.11 Hazardous Waste**

**A. General.** Contractor shall be aware of, and comply with, all laws, rules, and regulations relating to the handling and transportation of Hazardous Waste, including those requiring training and documentation. If Contractor observes any substances which it believes to contain Hazardous Waste within the City, including but not limited to in Containers designed for MSW, Yardwaste, Food Scraps, Recyclable Materials or Construction and Demolition Debris, Contractor shall not collect such Hazardous Waste but shall immediately notify the appropriate regulatory agencies and the City. The preceding sentence does not apply to the Collection of Electronic Waste and Universal Waste components that are classified as Hazardous Waste or Bulky Goods (i.e. refrigerators) that contain Freon, pursuant to this Franchise.

**B. Notice to Customers.** Contractor shall notify all Customers at least once a year with a mailing separate from other notices and brochures, of: (i) the prohibition against the Disposal of Hazardous Waste in authorized Containers, Bins, Compactors or Roll-off Boxes; and (ii) the obligation of each Customer to provide for the proper handling and disposition of Hazardous Waste. To the extent that Contractor has actual knowledge of the existence of such Hazardous Waste in a Container placed for Collection, Contractor shall not collect such Container. Contractor shall, prior to leaving

the location where such Hazardous Waste has been observed, leave a tag at least 2" x 6" that informs the customer why the Collection was not made and lists the telephone number for the Orange County Department of Environmental Management.

**C. Contractor to Segregate and Dispose.** In the event Contractor inadvertently collects any Hazardous Waste and during the course of transportation and disposition at a Disposal Facility, Materials Recovery Facility, Compost Facility, Construction and Demolition Debris Processing Facility, other Processing Facility or Transformation Facility and becomes aware that it has collected such Hazardous Waste, Contractor shall segregate the Hazardous Waste, and shall arrange for its transport and Disposal to a properly permitted Recycling, treatment or disposal facility of Contractor's choosing at Contractor's sole expense. Contractor shall be solely responsible for the transport and disposition of all Hazardous Waste that is collected by Contractor. City will cooperate with Contractor attempts to locate and collect the costs of such transport and disposition from the responsible Customer.

**D. Operating Procedures and Employee Training.** Contractor shall establish, implement and maintain written operating procedures designed to ensure Contractor's utilization of techniques generally accepted in the waste hauling industry for cities of the size and nature of the City of Lake Forest, to handle and dispose of Hazardous Waste and its compliance with the provisions of this Section 4.11 and all applicable laws, rules, and regulations. Contractor shall establish, implement and maintain an employee training program and shall ensure that employees responsible for the identification of Hazardous Waste are fully trained to properly handle and dispose of

Hazardous Waste. Contractor shall maintain documentation which describes the training received by its employees.

**4.12 City's Right to Change Scope of Work.** City may, without amending this Franchise, direct Contractor to cease performing one or more of the services described in Articles 4, 5 6, and/or Attachment B, may direct Contractor to modify the scope of one or more of such services, may direct Contractor to perform additional Collection services and processing services, and may similarly modify Contractor's obligations under other provisions of this Franchise.

The changes that City may direct include, but are not limited to, program expansions, new Diversion Programs to comply with the Act, modifying or stopping certain Diversion programs and/or specified portions of programs, change of Processing Facility, providing pilot programs and innovative services which may entail new Collection methods, different types of services, equipment and/or new requirements for Customers, and compliance with new laws, rules, and regulations.

If such changes cause an increase or decrease in the cost of performing the services, an appropriate adjustment in the Contractor's rates may be made as provided in Section 12.07. Contractor will continue to perform the new or changed service while the appropriate adjustment in rates, if any, is being determined.

The work to be performed by Contractor, including the scope of work in Attachment B, includes optional tasks and programs (referred to in Attachment B as Phase 2, Class 2 programs) that City, in its sole discretion, may choose to implement during the Term. Contractor has provided City with rates to be charged to Customers for

all of the Phase 2 Class 2 programs in Attachment B. If City chooses to implement any of those program(s), the provisions of this Section 4.12 shall not apply. Instead, the rate(s) for said program(s) shall be adjusted for the passage of time as described in Attachment J. The revenue from such rates, plus the revenue from sale of any Recyclable Materials, Diverted materials and any energy produced shall constitute the full and complete compensation to Contractor for implementing such program(s).

In the event the City eliminates one or more work tasks or programs from Contractor's scope of work pursuant to Section 14.11, Contractor shall cease performing such work task(s) and/or program(s) and shall not charge any rates for the provision of such work task(s) or program(s) to Customers.

In the event that City and Contractor cannot agree on the cost or other terms for a change in the scope of work pursuant to Section 4.12 within ninety (90) days of City's direction of the change in scope, City may (without Contractor's approval) authorize, permit, allow, invite and/or contract with entities other than Contractor to Collect, Recycle, Divert and Dispose of Recyclable Materials, Yardwaste, Food Scraps, Construction and Demolition Debris or other materials generated at Residential, Commercial and Business Establishments, Institutional or other Premises, regardless of whether or not the Customer pays for the Collection, Recycling or Diversion of such materials.

**4.13 Attendance At Meetings With City.** Contractor shall attend monthly status meetings with City representatives and agents beginning in \_\_\_\_ May 2014. The date, time and location for meetings will be established by the City, in consultation with the Contractor. Contractor shall provide all necessary and appropriate personnel to



attend each meeting such that the topics on the agenda can be addressed fully and completely. At the sole discretion of the City, additional meetings may be convened to continue to address issues not resolved at the monthly meetings and to address specific events, issues or concerns as needed by the City. Topics to be covered at the monthly meetings include progress on the Implementation Plan, progress toward the Annual Diversion Requirement, the Quarterly Tonnage Allocation Audits, review of implementation of all items in the Scope of Work, review of monthly reporting documents, planning for upcoming Special Events, and any other items relevant to the accomplishment of all tasks and attainment of all performance standards contained in the Franchise.

**4.14 Ownership of Municipal Solid Waste and Recyclable Materials.**

Ownership and the right to possession of all MSW, Yardwaste, Food Scraps and Recyclable Materials shall be transferred to Contractor from the Customer once such materials are placed in Containers and properly placed at the designated Collection location, by operation of this Franchise and pursuant to Chapter 16.09.000 of the Lake Forest Municipal Code.

**4.15 Abandoned Item Collection.** Contractor shall, at no additional charge, Collect abandoned items on sidewalks and in streets, alleys and public rights-of-way when notified by City and provide a Roll-Off Box at the City yard for disposal of abandoned items collected by City crews. Abandoned items to be collected by the Contractor include Bulky Goods.

**4.16 Contamination Warning Notice.** Contractor shall place a hang-tag on Recycling or Yardwaste Containers that contain contamination of Recyclable Materials.

(Contamination of Recyclable Materials is defined in Attachment B.) The wording and format of the notice shall be submitted to the City for approval prior to use. If after two sequential written hang tag warnings, the Container continues to be contaminated, Contractor's Recycling Coordinators shall telephone and/or make a site visit(s) to the Premises to discuss the problem with the owner or occupant. If, after contact by the Recycling Coordinator(s), there are two additional consecutive occurrences of contamination, Contractor may remove the Recycling or Yardwaste Container from Customer's Premises. Contractor shall report monthly to the City on all warning notices issued, Recycling Coordinators' contacts, and on all Recycling Containers or Yardwaste Containers removed from Premises due to contamination problems.

**ARTICLE 5. TRANSPORTATION AND DISPOSAL OF MSW OR PROCESSING OF RECYCLABLE MATERIALS**

**5.01 Transportation and Disposal of MSW.** City has entered into an agreement dated June 16, 2009 with the County of Orange for utilization of the Orange County Landfill System for disposal of MSW (see Attachment I). Contractor shall transport and deliver all MSW collected pursuant to this Franchise to the Orange County Landfill System, and to the specific landfill designated by City, for the duration of the City's contract with the County of Orange, including any renewals or extensions. If the City-designated landfill becomes unavailable, Contractor shall transport and deliver all MSW collected pursuant to the Franchise to another landfill within the Orange County Landfill system as directed by City. If there is no other landfill available within that system, or in the event the City's landfill agreement with the County of Orange terminates during the Term, Contractor shall transport and deliver all MSW collected pursuant to the Franchise to such other Disposal site designated by the City Manager or his/her designee.

During the term of the City's contract with the County of Orange, Contractor shall comply with all provisions of such contract, including Section 3.01(C) requiring transport and delivery of residue (as defined in Attachment I) from all Materials Recovery Facilities, Compost Facilities, all other Processing Facilities, and Transformation facilities to the Orange County Landfill System. The parties agree that no residue (as defined in Attachment I) will be generated by Contractor's use of an Anaerobic Digestion Facility to process material collected in City, because all Anaerobic Digestate will be transported and delivered by Contractor to a Compost Facility for Composting. If

City directs Contractor to deliver Anaerobic Digestate to a Disposal facility, Contractor shall comply with all requirements of Attachment I.

Contractor shall further cooperate with the operator(s) of the Disposal Site with regard to operations therein, including by way of example, complying with directions from the operator to unload Collection vehicles in designated areas, accommodating to maintenance operations and construction of new facilities, complying with the operator's Hazardous Waste exclusion program, and fully and transparently cooperating with the operator's tonnage tracking system including reporting of allocation methods and self-haul transfer allocations.

In the event Contractor utilizes a transfer station for consolidation and transport of MSW or other materials collected in City during the Term, Contractor shall execute an agreement with the County of Orange as described in Section 3.1 (C) of Attachment I, entitling Contractor to be charged the Franchise Rate (as defined in Attachment I) for use of the Orange County Landfill System.

#### **5.02 Transportation of Single Stream and Single Material Recyclable**

**Materials.** Contractor shall transport and deliver for processing Single Stream Recyclable Materials and Single-Material Recyclables, and appropriate Bulky Goods to the City-approved Clean MRF identified in Attachment O. City Manager or his/her designee may designate different clean MRFs in the future if the Clean MRF becomes unavailable due to lack of required permits or other unforeseen events.

In the event City directs Contractor to implement a SSC MRF Route as described in Attachment B, City may direct Contractor to deliver the material collected on the SSC MRF Route to the Dirty MRF identified in Attachment P. City Manager or his/her

designee may designate different Dirty MRFs in the future if the Dirty MRF becomes unavailable due to lack of required permits or other unforeseen events.

**5.03 Transportation of Yardwaste.** Contractor shall transport and deliver all Yardwaste to the City-approved landfills as Alternative Daily Cover (ADC) until regulatory conditions dictate otherwise. If the Tip Fee for ADC becomes more expensive than the Compost Facility identified in Attachment Q the City may direct Contractor to utilize the least expensive option. The City Manager or his/her designee may designate a different Compost Facility in the future if the Compost Facility identified in Attachment Q becomes unavailable due to lack of required permits or other unforeseen events.

**5.04 Transportation of Food Scraps.** Contractor shall transport and deliver all Food Scraps collected from Carts, Bins, Roll Off Boxes and Compactors pursuant to this Franchise to the City-approved (insert type of facility) identified in Attachment R. The City Manager or his/her designee may designate a different (insert type of facility) in the future if said facility(ies) become unavailable due to lack of required permits or other unforeseen events.

**5.05 Transportation of Construction and Demolition Debris.** Contractor shall transport and deliver all Construction and Demolition Debris collected from Bins and Roll Off Boxes pursuant to this Franchise to the City-approved Construction and Demolition Debris Processing Facility(ies) identified in Attachment S. The City Manager or his/her may designate different Construction and Demolition Debris Processing Facilities in the future if said facility(ies) become unavailable due to lack of required permits or other unforeseen events.

**5.06 (OPTIONAL) Transportation of Materials to Transformation Facility.**

Contractor shall transport and deliver (*insert type(s) of materials if applicable*) collected from (*insert type(s) of Container(s) if applicable*) pursuant to this Franchise to the City-approved Transformation Facility(ies) identified in Attachment T. The City Manager or his/her may designate a different Transformation Facility in the future if said facility(ies) become unavailable due to lack of required permits or other unforeseen events.

**5.07 Designated Processing Facilities Unavailable.** If any of the Processing Facilities described in Sections 5.02, 5.03, 5.04, 5.05 and 5.06 become unavailable for use by the City during the Term, City may designate a new Processing Facility pursuant to Section 4.12. The parties agree that a Processing Facility shall only be deemed to be “unavailable” if a Force Majeure event as described in Section 14.12 has occurred and the lack of availability of the Processing Facility is not due to Contractor’s negligence, illegal activity, neglect or willful misconduct. At City’s request, Contractor shall research and propose alternate Processing Facility(ies) for the material(s) requiring Processing, and shall submit a written analysis and recommendation to the City within five (5) working days concerning the cost for use of alternate facilities and any logistical changes that would be required to utilize such alternate facilities. City and Contractor will discuss the advantages and disadvantages of use of the potential alternate Processing Facilities and City will designate a selected facility. The decision of the City will be final. In the event a Processing Facility becomes unavailable due to the negligence, illegal activity, neglect or willful misconduct of Contractor, Contractor shall

bear all additional costs for use of an alternate Processing Facility including increased processing costs, transportation costs, transfer costs and all other costs.

**5.08 Contractor Request for Change of Processing Facility.** In the event Contractor proposes the use of a new or different Processing Facility than those currently in use, Contractor shall provide the City with a detailed description of the proposed facility including but not limited to, the location, Owner and operator, current facility users, technical capacity, processing methodology, diversion capabilities, potential advantages to the City, cost of use of the facility including impacts of transportation costs and tipping fees, and shall provide copies of all permits for the facility. In presenting the costs for use of the proposed facility, Contractor shall provide the City with both basic cost information and with proposed revisions to Attachment D showing the breakdown of costs for Collection, processing, transportation and Disposal for each rate category (Residential, Commercial, Multi-family and Roll Off) incorporating use of the proposed facility, as well as the total proposed rate change for each rate category incorporating use of the proposed facility. The City will evaluate the proposal and may, at its sole discretion, choose not to use the proposed facility if any one of the following issues are not addressed to the satisfaction of the City:

- (a) Costs are not acceptable.
- (b) The facility does not have all required state, federal and local permits, and land use approvals and/or the facility is not operating in compliance with all state, federal and local permits, regulations and land use approvals.
- (c) Performance of the facility is not acceptable (e.g. the diversion achieved or proposed is not adequate, the quality of the materials created at the facility is substandard, etc.)

- (d) The actual or proposed end use for the processed materials created by the facility is not the highest and best use as dictated by regulatory conditions.
- (e) The City does not need such a facility.

The parties will meet and discuss use of the proposed facility and the Contractor will provide prompt responses to City questions, concerns and requests for any additional information. City will inform Contractor in writing of its decision concerning use of the proposed facility within sixty (60) days of receipt of all of the information requested by the City. The decision of the City shall be final.

In the event City chooses to utilize a new or different Processing Facility, Exhibit D shall, for the remainder of the Term, (if desired by City) be revised to include additional columns such that the new table shows the breakdown of costs for Collection, processing, transportation and Disposal for each category of service.



## **ARTICLE 6. PROCESSING AND MARKETING OF RECYCABLE MATERIALS**

**6.01 General.** The costs proposed by Contractor shall include the costs of furnishing of all labor, supervision, equipment, materials, supplies and all other items necessary to perform the processing and materials marketing services required in a thorough, workmanlike and efficient matter.

**6.02 Permits.** Contractor shall utilize only processing facilities that are fully licensed and permitted under all applicable federal, state, regional and local laws, rules, and regulations. On or before January 1, 2014 Contractor shall deliver to City a package containing copies of all of the permits for the Clean MRF, the Compost Facility, the Food Scrap Processing Facility, the Construction and Demolition Debris Processing Facility and for any other Processing Facility and Transformation Facility approved by City that Contractor will use to process materials collected within City. Contractor shall simultaneously submit original signed contracts with each Processing Facility and Transformation Facility (unless owned by Contractor) evidencing the terms and conditions under which Contractor is entitled to utilize the facilities for processing of City's materials.

**6.03 Delivery of Residue to Landfill.** Contractor shall deliver, or arrange to be delivered, all non-recyclable Residue from the operations at the Materials Recovery Facility (both Clean MRF and Dirty MRF), the Compost Facility, the Food Scrap Processing Facility and the Construction and Demolition Debris Processing Facility to the City designated landfill. The parties acknowledge that City's existing arrangements with the Orange County Landfill System will expire in 2020. City will be responsible for renewing these arrangements and shall notify Contractor when such renewal has taken

place. In the event that the Orange County Landfill System becomes unavailable to City for Disposal of MSW from City, Contractor shall assist City in identifying and researching potential alternate Disposal Sites and shall cooperate with City in switching to the alternate Disposal Sites identified by City. In such event, the provisions of Section 4.12 and Section 12.04 shall apply if the change in Disposal Site creates a change (either an increase or decrease) in the cost of transport or Disposal of MSW.

#### **6.04 MRF, Compost, Food Scrap and C/D Facility Operating**

**Requirements.** Contractor shall operate the Clean Materials Recovery Facility, the Dirty MRF (if directed by City), the Compost Facility, the Food Scrap Processing Facility and Construction and Demolition Debris Processing Facility it owns in compliance with all applicable federal, state, regional and local laws and regulations and shall adhere to the requirements of all permits for each facility. If Contractor is using facilities it does not own, it shall be Contractor's responsibility to investigate and determine that said facilities are operating in compliance with all applicable laws, rules, and regulations and permit requirements. (Note: In the event City has directed implementation of a SSC MRF Route and use of a Dirty MRF as described in Attachment B, City must have approved the use of the proposed Dirty MRF, and such approval shall only be given if the Dirty MRF meets the requirements of applicable law, including but not limited to Public Resources Code Section 42649 (b) (2) and all subsequent amendments, rules and regulations promulgated in furtherance thereof. If, at any time during the Term, said facilities are not operating in compliance with all legal requirements, it shall be the duty of Contractor to immediately report the situation to the City. Upon receipt of such information, City may conduct an independent investigation of the situation, may require

Contractor to utilize a different facility while City is conducting its investigation, or may take other actions City deems reasonable and necessary to protect the interest of the City, its customers, public health and safety and the environment.

The Clean MRF must include processing lines for cleanup of Single-Material Recyclables, sorting of Single Stream Recyclable Materials. The Dirty MRF (if use is directed by City) must include processing lines for sorting of materials collected on the SSC MRF Route.

The Composting Facility must be capable of processing residential and commercial Yardwaste and Food Scraps. (If an alternate type of Processing Facility is proposed for Food Scraps, fill in here.) The Construction and Demolition Debris Processing Facility must be capable of processing all of the Construction and Demolition Debris that is collected by the Contractor in the City.

**6.05 Processing Requirements.** Contractor shall process Single-Material Recyclables, Single Stream Recyclable Materials and SSC MRF Route materials in such a manner that satisfies the diversion implementation requirements of Table 1 Section 1.6 in Attachment B, and Section 6.06 of this Agreement.

Materials collected by Contractor shall be processed at the facilities listed below:

Material	Processing Facility
Single Material Recyclable Materials (glass, metals, loose and baled cardboard, etc.)	Clean MRF
Single Stream Recyclable Materials	Clean MRF

Multi-family SSC MRF Route (where no Single Stream program has yet been implemented)	Dirty MRF SSC MRF
“Commercial and Business Establishments” SSC MRF Route (where no Single Stream program has yet been implemented)	Dirty MRF SSC MRF
Yardwaste	ADC at Landfills or Compost Facility
Food Scraps Materials	Compost Facility and Anaerobic Digestion
Construction and Demolition Debris	Construction and Demolition Debris Processing Facility

Contractor shall not deliver MSW or any other materials to a Transformation Facility without the express written permission of the City. In the event the City directs the use of a Transformation Facility, Contractor shall comply with all the provisions of Public Resources Code Section 41783. Further, Contractor shall not deliver MSW or any other materials to a Transformation Facility in excess of the number of Tons that qualify as Diversion under the Act.

**6.06 Diversion Tracking Requirement.** Contractor shall track and report on the total Tons and percent of materials Collected by Contractor that are Diverted and Disposed during the Term. In order to earn the Phase 2 Franchise extension described in Section 6.08, Contractor must divert a minimum of fifty percent (50%) of all MSW,

(including Recyclable Materials, Yardwaste, Food Scraps, and Construction and Demolition Debris) Collected by Contractor in the City on a calendar year basis, by the end of calendar year 2020. The Annual Diversion Rate shall be calculated by dividing the total Tons of MSW Disposed (including Residue attributable to the City from the processing operations at all of the Processing Facilities processing materials from City including, but not limited to, the Clean and Dirty MRFs, Compost Facility, Processing Facilities, and Construction and Demolition Debris Processing Facility and Transformation Facility by the total Tons of all MSW collected by Contractor within the City. The Annual Diversion Rate shall be calculated as shown in Attachment BB. In order to earn the Phase 2 Franchise extension, Contractor must, in addition to diverting a minimum of fifty percent (50%) of the Tons Collected by Contractor in City, also divert a minimum of fifty percent (50%) of the Tons Collected by Contractor in each of the following categories: (a) Single Family, (b) Multi-Family, (c) Commercial and Business Establishments and (d) Roll Off materials handled by the Contractor. For purposes of this requirement, "Roll Off materials" includes both permanent and temporary bins and Roll Off Box service, collection of Compactors of ten cubic yards or larger in size, and Construction and Demolition Debris Collection.

**6.07 Reporting of Annual Diversion Rate Achieved.** On or before March 15, 2015, and on or before March 15 in all subsequent years of the Term, Contractor shall report to City the Annual Diversion Rate for the preceding calendar year, including copies of all reports from the County of Orange and CalRecycle, all Processing Facilities and Transformation Facilities and all other records used as source documents for the Tons collected, processed and Disposed by Contractor for the prior calendar

year. Contractor's report shall include a list of all Tons of MSW Disposed by Contractor at Disposal facilities, and shall include Residue from all Processing Facilities utilized by Contractor including but not limited to Clean and Dirty MRFs, Compost Facilities, Food Scrap Processing Facilities, Construction and Demolition Debris Processing Facilities and Transformation Facilities. The report will show the total Tons from City that have been Disposed. The report will also list the total Tons of MSW, Single-Material Recyclables, Single Stream Recyclable Materials, Yardwaste, Food Scraps, Construction and Demolition Debris and all other materials Collected from within City by Contractor, and the total number of Tons of said materials. Said report shall show the total number of Tons collected and diverted in each of the following categories: (a) Single Family residential, (b) Multi-Family residential, (c) Commercial and Business Establishments, and (d) Roll Off Box service. For purposes of this report Roll Off shall include both permanent and temporary Bins and Roll Off Box service, Collection of Compactors of ten (10) cubic yards or larger in size, and Collection of Construction and Demolition Debris. The report shall show the annual Diversion rate calculation as described in Section 6.06 herein and the resulting percentage of Tons disposed, as shown in Attachment BB. Late submittal of the annual diversion report shall result in the assessment of liquidated damages as listed in Section 13.09 D. Contractor shall provide a written response to any questions from City concerning the Diversion calculations and shall, if requested, meet with City to discuss the calculations, the underlying tonnage reports, and any other related issues. If requested by City, Contractor shall supply all additional documentation required to substantiate the Diversion rate calculation to the satisfaction of City. If requested, Contractor shall make available its personnel,

consultants and other Persons who performed the Diversion rate calculations or prepared the tonnage reports used therein, to respond to questions from City or City's agents concerning the calculations. Contractor must provide explanations for and substantiation of all tonnages used in the Diversion Rate calculations including tons of materials delivered to transfer stations, materials recovery facilities, waste-to-energy and transformation facilities, construction and demolition waste processing facilities, composting facilities and Disposal Facilities. Any discrepancies in reported tonnages will be investigated by the City and must be resolved to the satisfaction of the City. No exceptions will be allowed to these reporting requirements. In the event Contractor fails to substantiate discrepancies in reported tons to the City's satisfaction by May 15 of any year, the annual adjustment of Contractor's rates described in Section 12.03 shall not occur for the period of July 1 through the following June 30 (a period of one year). If Contractor subsequently complies with all requirements of this Section 6.07, regular annual rate adjustments will resume the following year. However, in such event, the difference in the listed indexes shall be calculated only for the regular twelve month period as described in Attachment J, and shall not "look back" to the prior year, for which Contractor does not receive the annual adjustment. (By way of example, if Contractor's tonnage discrepancy for calendar year 2015 is not resolved to the satisfaction of the City by May 15, 2016, the annual rate adjustment scheduled for July 1, 2016 shall not occur.) Falsification of any tonnage record, negligent or intentional submittal of misleading or false information concerning the Tons Collected, processed, or Disposed, or use of false or misleading information in the Diversion calculation, shall

be considered a material breach of this Franchise and grounds for immediate termination of Contractor's services by City.

**6.08 Diversion Incentive.** Contractor may earn up to two (2) one-year extensions of the Franchise Term, as described herein.

**A. Phase 1 Extension Opportunity.** If Contractor meets the implementation requirements listed below and as detailed in Table 1 of Section 1.6 of Attachment B (the "Phase 1" requirements); and Contractor is in full compliance with all requirements of this Franchise, including but not limited to Sections 6.06 and 6.07, City will extend the Term of the Franchise by one year. In order to qualify for the Phase I incentive, Contractor must have achieved all of the following by December 31, 2016: (a) have deployed, and be Collecting, Processing and Diverting Single Stream Recyclable Materials and/or Single-Material Recyclables from, a minimum of two hundred (200) Bins that were not deployed as of the May 2014 baseline at Commercial and Business Establishments; (b) have deployed and be Collecting, Processing and Diverting Single Stream Recyclable Materials and/or Single-Material Recyclables at a minimum of one hundred (100) Bins at Multi-family complexes that were not deployed as of the May 2014 baseline (see below); and (c) have deployed Food Scrap Carts and/or Bins and be Collecting, Processing and Diverting Food Scraps at a minimum of seventy (70) restaurants that were not participating in City's Food Scrap diversion program as of the May 2014 baseline. (For example if Contractor meets the Diversion requirements for Phase 1, the City will extend the Franchise for one year from April 30, 2022 to April 30, 2023.) During May 2014 Contractor and City will conduct an inventory of Bins deployed at all Commercial and Business Establishments that are already being Collected in the



Single Stream and/or Single-Material Recycling Program and the number of restaurants that are already participating in the Food Scrap diversion program. The results of this survey shall be used as the baseline (the “May 2014 baseline”) for the number of Bins deployed and Collected in the Single Stream/Single-Material Recycling Program and the number of restaurants participating in the Food Scrap Diversion Program for the purpose of calculating whether or not Contractor has earned the one-year extension for Phase 1.

**B. Phase 2 Extension Opportunity.** If Contractor meets the implementation requirements of Phase 2 as listed below (and as detailed in Table 1 Section 1.6 of Attachment B); and Contractor is in full compliance with all requirements of this Franchise, including but not limited to Sections 6.06 and 6.07, City will extend the Term of the Franchise by one year. In order to qualify for the Phase 2 incentive, Contractor must have achieved all of the following by December 31, 2020: (a) have deployed and be Collecting, Processing and Diverting Single Stream and/or Single-Material Recyclables a minimum of two hundred (200) Bins at Commercial and Business Establishments that were not deployed as of the January 2017 baseline (see below); (b) have deployed and be Collecting, Processing and Diverting Single Stream and/or Single-Material Recyclables a minimum of one-hundred (100) Bins at Multi-family complexes that were not deployed as of the January 2017 baseline; (c) have deployed Food Scrap Carts and/or Bins and be Collecting, Processing and Diverting Food Scraps at a minimum of seventy (70) restaurants that were not participating in the Food Scrap Diversion Program as of the January 2017 baseline; (d) have achieved a diversion rate percentage of fifty percent (50%) or greater, as calculated pursuant to Attachment BB

for calendar year 2020; and (e) have further achieved a diversion rate in calendar year 2020 of fifty percent (50%) or greater in each of the following areas: (i) Residential tons Collected, (ii) Commercial and Business Establishment Tons Collected, (iii) Multi-Family Tons Collected, and (iv) Tons Collected from Roll Off Boxes. During January 2017 Contractor and City will conduct an inventory of Bins deployed at all Commercial and Business Establishments that are already being Collected in the Single Stream Recyclable Materials and/or Single-Material Recyclables Program and the number of restaurants that are already participating in the Food Scrap Diversion Program. The results of this survey shall be used as the baseline (the "January 2017 baseline") for the number of Bins deployed and Collected in the Single Stream Recyclable Materials/Single-Material Recyclables Program and the number of restaurants participating in the Food Scrap Diversion Program for the purpose of calculating whether or not Contractor has earned the one-year extension for Phase 2.

**C. Failure to Meet Phase 1 or Phase 2 Extension Requirements.** In the event Contractor meets all of the extension requirements in both Phase 1 and Phase 2, the Term will be extended to April 30, 2024. If Contractor fails to meet the extension requirements of Phase 1, such failure will not preclude Contractor from earning a one-year extension of the Franchise in Phase 2. If Contractor fails to meet the extension requirements of Phase 1, but meets the extension requirements of Phase 2, City will extend the Term by one year, to April 30, 2023. As described in Section 6.08 B, the baseline for Phase 2 will be established in January 2017. If Contractor has failed to meet the extension requirements of Phase 1, the baseline is reset for Phase 2, and Contractor shall not be required to meet the outstanding Phase 1 requirements prior to

meeting the Phase 2 requirements. Example: Contractor deploys and collects Single Stream and Single-Material Recyclables from only 195 new Bins (Bins that were not deployed and collected as of the 2014 baseline) during Phase 1. Of these, 115 Bins were deployed at Commercial Business Establishments and 80 were deployed at Multi-family complexes. Contractor deploys and Collects Carts and Bins containing Food Scraps at 70 restaurants. Contractor has, therefore, missed the Phase 1 extension requirements by 105 Bins for Single Stream and Single-Material Recyclables. Contractor is not required to deploy these 105 Bins in order to qualify for the Phase 2 extension. However, Contractor must meet all of the Phase 2 extension requirements listed in Section 6.08 B in order to earn the Phase 2 extension.

**D. Notice of Extension or Failure to Earn Extension.** The City will evaluate Contractor's performance in Phase 1 during February 2017. City will notify Contractor in writing on or before February 28, 2017 as to whether or not the Term is extended by one year for Phase 1. The City will evaluate Contractor's performance in Phase 2 during February 2021. City will notify Contractor in writing on or before February 28, 2021 as to whether or not the Term is extended by one year for Phase 2.

**6.09 Marketing of Recovered Materials, Compost and Other Products.** Contractor shall be responsible for marketing, or arranging for the marketing, of all Recovered Materials, all Compost product(s) and all other products, including but not limited to Anaerobic Digestate, biochar, methane, compressed natural gas, other marketable gas products and electricity generated or produced from the Processing Facilities utilized to process materials collected in City, including the Materials Recovery Facilities, Compost

Facility, Food Scraps Processing Facilities and the Construction and Demolition Debris Processing Facility.

**6.10 Limits on Modes of Disposition.** City may direct Contractor to stop delivering Recovered Materials for uses that do not qualify as Diversion for purposes of the Act. No Recyclable Materials or other materials, which have once been delivered to the Materials Recovery Facility, Compost Facility, Food Scrap Processing Facility or Construction and Demolition Processing Facility, shall be used for Alternative Daily Cover at solid waste landfills unless specifically allowed by CalRecycle regulations.. No MSW of any kind may be disposed of on land at any location other than by delivery to the City designated landfill. No MSW of any kind may be disposed of in water or in the atmosphere.

**6.11 Biomass and Transformation.** The Act allows City to utilize either Biomass or Transformation to divert up to ten percent (10%) of the fifty percent (50%) mandated annual diversion under the Act. (By way of example, if the City's wastestream consisted of one hundred thousand (100,000) tons, then fifty percent (50%) diversion would mean that fifty thousand (50,000) tons were diverted. Ten percent (10%) of the fifty percent (50%) diversion would mean that tons Diverted by Biomass and Transformation could not exceed ten thousand (10,000) tons per year). If any of the Processing Facilities utilized by contractor to process Recyclable Materials or MSW pursuant to this Franchise, plan to use Biomass or Transformation for any of City's materials, (excluding those facilities listed in Attachment T) Contractor shall first submit to City a request to do so, including all pertinent information on the facilities to be used, the quantity of material to be processed, copies of permits for the facilities and all other information as may be

requested by City. Contractor shall not proceed with use of Biomass or Transformation facilities that are not listed in Attachment T, unless Contractor has received written approval from City to do so. If approved by City, Contractor shall adhere to any conditions or restrictions that City may include with its approval.

**6.12 City Access to Processing Facilities.** In addition to City's rights under other provisions of this Franchise, City and its agents shall have the right at all reasonable times to enter each of the Processing Facilities to (a) observe operations, (b) observe compliance with permit requirements, (c) observe tonnage allocation and tonnage tracking procedures, and (d) for any other reasonable purpose.

## **ARTICLE 7. EQUIPMENT, FACILITIES AND PERSONNEL**

**7.01 General.** Contractor shall furnish all facilities, vehicles and equipment necessary to perform safely and efficiently the services required by this Franchise.

### **7.02 Facilities.**

**A. General.** Contractor shall provide all facilities required for storage, maintenance, repair and deployment of all vehicles and equipment required to perform the services required by this Franchise. Contractor shall also provide the necessary facilities and office space for personnel of Contractor providing the services required by this Franchise. The facility or facilities used by Contractor to perform the required services shall be fully permitted in compliance with all Federal, State and local laws, rules, and regulations. In the event the City receives complaints about the facilities (whether for noise, odor, litter, traffic problems or any other issue), Contractor shall promptly take action to address the issue(s) and shall resolve the problem within five (5) business days.

### **7.03 Vehicles.**

**A. General.** Contractor shall provide Collection and auxiliary vehicles of the type, size and configuration, and in the quantities shown on Attachment F. All front loader, rear loader, side loader, Roll Off Box collection vehicles and all other collection vehicles shall be new and unused as of May 1, 2014 and suitable in design and construction for arduous heavy-duty service. All front loader, rear loader, side loader and Roll Off Box collection vehicles acquired during the Term shall also be new and unused. For purposes of this section, "new" means the truck chassis, body and all

other parts and components shall be new and unused. If it becomes necessary during the Term, a used diesel vehicle may be placed into service on a temporary basis (i.e., for no more than 90 days) provided that it is safe, in good operation condition, and equivalent in design and capacity to vehicles in regular service. All vehicles shall comply with all laws and regulations including but not limited to the California Air Resources Board regulations. All front loader, rear loader, side loader and Roll Off Box collection vehicles listed in Attachment F shall be dedicated one hundred percent (100%) to use in City, and shall not be used to collect any material in any other location at any time. Collection routes within the City for MSW, Recyclable Materials, Food Scraps, Yardwaste, and Construction and Demolition Debris shall collect only materials from within City such that when the Collection vehicles are weighed at the Disposal facility and/or at the Processing Facilities, one hundred percent (100%) of the Tons in each vehicle originate solely from City.

**B. Alternative Fuel Vehicles.** All Residential Premises and “Commercial and Business Establishments” Collection vehicles (including all side loaders, rear loaders, front loaders, Roll Off, and any other types of vehicles) shall operate in full compliance with the requirements of the California Air Resources Board and the South Coast Air Quality Management District’s rules and regulations including Rule 1193. Route supervisor’s vehicles and all other ancillary vehicles that will operate on a routine basis in the City shall comply with all applicable laws, rules, and regulations, including but not limited to the California Air Resources Board and South Coast Air Quality Management District regulations.

**C. Vehicle Identification.** The wording “Serving the City of Lake Forest” and the name of Contractor, Contractor’s local telephone number, and a unique vehicle identification number for each vehicle shall be prominently displayed on all Collection vehicles. Alternative Fuel Vehicles shall display a statement as to the type of alternative fuel being used. City shall approve all details, including size, color and location of text, identification numbers and logo.

**D. Cleaning and Maintenance.**

1. **General.** Contractor shall maintain all of its equipment used in providing service under this Franchise in a safe, neat, clean and operable condition at all times.

2. **Cleaning.** The exterior and interior of vehicles used in the Collection of MSW, Recyclable Materials, Food Scraps, Yardwaste, and Construction and Demolition Debris shall be thoroughly washed by Contractor at least once a week or more often as needed to maintain a clean appearance and thoroughly steam cleaned at least once a month or more often as needed to maintain a clean appearance. In addition, the interior collection compartment of vehicles used for the collection of Food Scraps shall be thoroughly washed on a daily basis. City may inspect vehicles at any time to determine compliance with sanitation requirements and aesthetic conditions. Contractor shall make vehicles available to the Orange County Department of Environmental Management and the City for inspection, at any frequency it requests.

3. **Painting.** All vehicles used in Collection of MSW, Yardwaste, Recyclable Materials, Food Scraps, and Construction and Demolition Debris



shall be repainted by Contractor at least once every five (5) years, unless the City determines that repainting specific vehicles at that frequency is not necessary because the vehicle's appearance is satisfactory or unless the City determines that repainting a specific vehicle earlier (due to graffiti, wind damage, etc.) is necessary to ensure that the vehicle gives the appearance of having been repainted within the preceding sixty (60) months. All graffiti shall be removed or painted over within forty-eight (48) hours of discovery.

4. Maintenance. Contractor shall inspect each vehicle daily to ensure that the vehicle and all equipment is operating properly and in compliance with this Agreement. Vehicles which are not operating properly shall be taken out of service until they are repaired and do operate properly. Contractor shall perform or cause to be performed all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. Contractor shall keep accurate records of all vehicle maintenance, recorded according to part or vehicle identification, date, and mileage, and shall make such records available to the City upon request.

5. Repairs. Contractor shall repair, or arrange for the repair of, all vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all vehicles and equipment in a safe and operable condition. If an item of repair is covered by a warranty, Contractor shall obtain warranty performance. Contractor shall maintain accurate records of repair, which shall include the part or vehicle identification, date/mileage, nature of repair and the signature of a maintenance supervisor that the repair has been properly performed.

6. Storage. Contractor shall arrange to store all vehicles and other equipment in safe and secure location(s). Facilities used for storage shall comply with all zoning and land use requirements applicable to the facility. Contractor shall not store vehicles or equipment (including Bins, Carts, and Roll Off Boxes) in parking lots, vacant lots or any other non-permitted area. City shall have access to Contractor's regular vehicle and equipment storage facilities at all times.

7. Leaking Vehicles. In the event that City receives a report of a leaking vehicle, Contractor shall, upon notification by City, immediately take the vehicle out of service and repair the leak. Contractor shall be responsible for cleanup of any spilled fluids whether on public streets, private streets, public property or private property.

8. Brake Inspections. The brake system of each vehicle used in performance of this Franchise shall be inspected and certified annually according to state law by the California Highway Patrol or a brake inspection station licensed by the California Highway Patrol. Notice of certification shall be filed with the City within thirty (30) days after each certification, but in no event later than May 1 of each year of the Term beginning May 1, 2014. Failure to submit the required certification shall be grounds for termination of this Franchise.

**E. Operation**. Vehicles shall be operated in compliance with the California Vehicle Code and all applicable safety regulations and local ordinances. Vehicles shall be operated only by employees of Contractor who are appropriately licensed by the California Department of Motor Vehicles. Contractor shall not load

vehicles in excess of the manufacturer's recommendations or limitations imposed by state or local weight restrictions on vehicles. Contractor is solely responsible for paying any fines imposed by the California Highway Patrol, or other regulatory agencies, for violation of these requirements.

#### **7.04 MSW and Recyclable Materials Containers.**

**A. General.** Contractor shall furnish (and deliver to Customers) all Containers for storage of (i) MSW, (ii) Recyclable Materials, (iii) Yardwaste, (iv) Food Scraps, and (v) Construction and Demolition Debris of the types and sizes as described in Attachment B. A list of the Containers to be provided by Contractor is included in Attachment E. All such containers shall be new and unused as of the commencement of this Franchise. The type, size and number of containers shall be sufficient to contain, with the lid closed, all MSW, Recyclable Materials, Yardwaste, and Food Scraps generated between collections.

All Containers provided by the Contractor shall conform to the specifications in Attachment E.

**B. Repair, Replacement, and Exchange.** Contractor shall repair or replace any Container which is damaged, broken, lost or stolen; provided that Contractor may charge Customer the current market price for a new Container for damage or loss due to Customer-caused damage, whether such damage was negligent or intentional. Contractor shall repair or replace all Containers which do not meet vendors' warranties and the City required Container specifications as set forth in

Attachment E. Contractor shall not have to replace a non-repairable Compactor not owned or leased by it to a Customer.

Upon request from a Residential Premises Customer, Contractor shall exchange a Cart that is in Customer's possession and not damaged, broken, lost or stolen for a new Cart within fourteen calendar (14) days of request. Contractor shall charge the Customer the fee as set forth in Attachment D for a Cart exchange.

**C. Cleaning, Painting and Maintenance of Contractor-Furnished Containers.** Contractor shall maintain all Contractor-furnished Containers in a functional condition and so as to present an attractive appearance. All Contractor-furnished Bins shall be permanently labeled on the front (in a contrasting color so as to present an attractive appearance) with the size of the Bin (e.g. "3 Yard"). Such Containers shall be painted and repainted as requested by City or Contractor shall replace any Container with a new or re-conditioned Container, of like-size, as directed by City. Contractor-furnished Containers that have been painted or marked with graffiti shall be repainted or removed from the Premises by Contractor within twenty-four (24) hours of notification by the Customer or City. At the same time as such Containers are removed, they shall be replaced by like-sized Containers furnished by Contractor without evidence of graffiti. Contractor shall clean and maintain all Contractor-furnished Containers in a safe and sanitary condition and whenever the City, or another agency with jurisdiction as a regulator, determines that cleaning is required to abate a health concern or nuisance condition.

## **7.05 Personnel.**

**A. General.** Contractor shall furnish such competent and qualified drivers, laborers, mechanical, supervisory, clerical, managerial and other personnel as may be necessary to provide the services required by this Franchise in a safe, efficient, reliable and courteous manner. The minimum complement of employees which Contractor will provide for the scope of work described in this Franchise shall be as set forth on Attachment G.

**B. Driver Qualifications.** All drivers shall be trained and qualified in the operation of waste Collection vehicles and must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles. Each driver shall carry his/her license during work hours.

**C. Uniforms.** Contractor shall require its drivers, and all other employees who come into contact with the public in the City during working hours, to wear standardized uniforms bearing the Contractor's name, and to carry an identification badge or other means of identifying the employee. The City shall have the right to approve the style and color of the uniforms. Such uniforms shall present a freshly cleaned appearance. Employees shall be instructed to present employment identification cards to City staff, customers, security guards and law enforcement officers upon request, during work hours.

**D. Safety Training.** Contractor shall provide suitable operational and safety training for all of its employees who utilize or operate vehicles or equipment for Collection or processing of MSW, Recyclable Materials, Yardwaste, Food Scraps, and

Construction and Demolition Debris or who are otherwise directly involved in such Collection or processing.

**E. No Gratuities.** Contractor shall not permit any officer, agent or employee to demand or solicit, directly or indirectly, or to accept, either directly or indirectly, any additional compensation or gratuity from members of the public, any City representative or employee, or any other Person or entity for the Collection of MSW, Recyclable Materials, Yardwaste, Food Scraps, Construction and Demolition Debris or any other material under this Franchise.

**F. Employee Conduct and Courtesy.** Contractor shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. Contractor shall regularly train its employees in customer courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection crews to perform the work as quietly as possible. If any employee is found not to be courteous or not to be performing services in the manner required by this Franchise, Contractor shall take all necessary corrective measures, including, but not limited to, transfer, discipline or termination. If City has notified Contractor of a complaint related to discourteous behavior, Contractor shall, upon request of City, reassign the employee to duties not entailing contact with the public while the Contractor is pursuing its investigation or disciplinary process.

**G. Provision of Two Recycling/Public Education Coordinators.** Contractor shall provide two (2) full time Recycling and Public Education Coordinators ("Recycling Coordinators") to implement Diversion programs in the City of Lake Forest.

The minimum duties, work tasks, and requirements for both Recycling Coordinators shall be as described in Attachment AA, which is incorporated herein by this reference. Each coordinator will devote 100% of his or her time (the equivalent of at least 2,000 work hours per calendar year) to these activities exclusively for City. The Recycling Coordinators identified in Attachment G, shall have a minimum of three (3) years experience in the design, implementation and operation of Recycling, Composting and Diversion Programs, interaction with the public, and detailed knowledge of the requirements of the Act. This shall not be an entry-level position and Contractor shall provide two (2) Recycling Coordinators that are fully trained and experienced as described herein on or before May 1 2014. If Contractor fails to provide two (2) full-time Recycling Coordinators on or before May 1, 2014, the liquidated damages in Section 13.09F shall apply. Contractor shall notify City, in writing, of the name, education, background and experience and a list of three (3) references for each coordinator prior to commencing operations and whenever there is a change in the staffing of the positions. Upon City request, Contractor shall designate a different coordinator if either coordinator does not meet the requirements enumerated herein and/or if the City is otherwise dissatisfied with the performance of the designated coordinator. The coordinator's duties shall include, but not be limited to: (i) conducting waste audits at Commercial and Business Establishments: (ii) preparing Recycling and Diversion plans for businesses, institutions and other waste generators in City: (iii) routinely auditing each of the Diversion Programs described in Article 4 and Attachment B, including photographing said programs and reporting to City on the results of each program as detailed in Attachment B; (iv) preparing public education materials as required in this

Franchise as well as other public education materials that may be requested by City; (v) attending all City-sponsored special events where Recycling and the environment are the theme or topic; (vi) coordinating Recycling programs at all City-sponsored special events for the diversion of cardboard, glass, plastic beverage containers, aluminum cans, newspaper and mixed waste paper that is generated by the event; (vii) implementing and maintaining the Recycling program at City Hall and all other City facilities including responding to questions about the program; (viii) speaking to community groups, schools, homeowner's associations and other organizations about the City's Diversion Programs; (ix) acting as a community resource with regard to Recycling and Diversion Programs; (x) working in a full and transparent manner with the City and its agents in troubleshooting and implementing programs, including audits, processing, and prices for Recyclable Materials, Food Scraps, Yardwaste; and markets for energy and Anaerobic Digestate produced by Anaerobic Digestion and (xi) such other duties as may be assigned by City. City reserves the right to re-direct the work efforts of the coordinator and to prioritize the tasks to be completed as needed throughout the Term of this Franchise.

**H. Initial Hiring.** Prior to commencement of operations, Contractor shall hire the necessary complement of employees. Contractor shall conduct a background check of each applicant which will, at a minimum, include a check of his/her driving record through the California Department of Motor Vehicles, record of criminal convictions, and references. All applicants shall be required to take a standard test for use of illegal drugs and alcohol as a condition of employment. Drivers shall be required to demonstrate proficiency in the English language; at least one person proficient in



spoken English shall be on every Collection vehicle when that vehicle is in service. Contractor will furnish City with a copy of its training manual and schedule of training of new employees; City may require Contractor to include specific topics in such manual and training program. City may attend and observe any safety or operational training classes. Nothing in these Sections 7.04.G and H shall be construed to give City control over the selection or supervision of Contractor's employees.

Contractor may employ or otherwise engage current employees of Waste Management of Orange County (WMOD) without conducting the background check described above if City receives a statement, signed by a responsible officer of WMOD, that the employee has worked for that company for at least two consecutive years and has performed satisfactorily. All other elements of this Section 7.04 shall apply to such employees.

I. **Ongoing Training and Testing.** Contractor shall provide regular safety training on an ongoing basis and shall conduct random drug and alcohol testing of employees in safety-sensitive positions in compliance with regulations issued by the U.S. Department of Transportation.

J. **Use of Workers Not Employed by Contractor.** If Contractor engages any workers through an independent contractor, such as an employment agency, it shall ensure that such contractor or agency:

1. complies with the nondiscrimination requirements in Section 14.01; and

2. Maintains Comprehensive General Liability, workers compensation and Employer's Liability insurance covering such workers in the amount required by Section 11.02A and with policies meeting the other requirements of Section 11.02.

Contractor is responsible for providing qualified and competent workers, whether as direct employees or through workers furnished by an independent contractor. Contractor is also responsible for providing sufficient training to all workers so that they can perform the work in a safe and competent manner and are thoroughly familiar with the work that Contractor is required to perform and the standards it is required to meet, under this Franchise.

All drivers, mechanics, supervisory and managerial workers shall be direct employees of Contractor.

## **ARTICLE 8. OTHER COLLECTION-RELATED SERVICES**

### **8.01 Billing.**

**A. General.** Contractor shall: (i) bill Customers for MSW and Recyclable Materials Collection at the City-established rates in Attachment D, as adjusted per the Franchise; (ii) maintain accurate billing and payment records; and (iii) bill Customers on a monthly, bimonthly or quarterly schedule as approved by City. Customers' bills shall be itemized showing the charges for each classification of services. Customer billing shall be performed pursuant to the requirements contained in Attachment B, Section 1.

**B. City Inserts.** City may direct Contractor to produce and insert mailers with billings relating to City-sponsored events, integrated waste management activities, other environmental programs, and authorized rate increases at least six (6) times per year. If a postage increase is incurred for the City insert, the City will be responsible for paying said increase.

**C. Delinquent Accounts.** Contractor shall be responsible for collecting delinquent charges for services it renders to customers. Contractor shall employ measures, consistent with federal and California laws regulating the collection of debts, to obtain payment of charges including use of its own employees to obtain judgments in Small Claims Court and to enforce such judgments.

**8.02 Billing Records.** Contractor shall keep records of all billing documents and customer account records including, but not limited to, invoices, customer payment coupons mailed with the invoice and collection notices, for a period of three (3) years

after the date of receipt or issuance. Contractor may, at its option, maintain those records in electronic form, hard copy, or in any other manner, provided that the records can be preserved and retrieved for inspection and verification in a timely manner.

**8.03 City Access to Billing Information.** Contractor shall provide City with prompt access to all current and up-to-date billing information necessary to allow the City to respond to customer inquiries or complaints or as otherwise required by City. At request of City, Contractor shall provide “read only” electronic access to Contractor’s Customer billing records such that City employees can research billing inquiries and Customer account history from City Hall. Contractor shall cooperate with City to establish this “read only” function and shall ensure that City has access to Customer billing information in “real time”.

**8.04 Public/Customer Service and Accessibility.**

**A. Office Hours and Location.** Contractor shall maintain an office located either in the City or within a twenty-five (25) mile radius of the City limits. The office will be available for customers to pay bills, subscribe to service, change service, stop service and otherwise contact Contractor. Contractor’s office shall be open to the public from 8 a.m. to 5 p.m. Monday through Friday. The office may be closed on Saturdays, Sundays and holidays as defined in this Franchise.

**B. Availability of Representative.** A knowledgeable representative of the Contractor shall be available during office hours to communicate with the City and members of the public in person and by telephone and to assist customers making payment in person.

**C. Telephone.** Contractor shall maintain a telephone in operation at its office during office hours. Incoming calls will be answered in a manner satisfactory to the City. Contractor shall install telephone equipment sufficient to handle the volume of calls typically experienced on the busiest weekday. Contractor shall also maintain an emergency telephone number for use during other than normal business hours and shall provide that number to City. Contractor shall have a representative, or an answering service to contact such representative, available at the emergency telephone number during hours when the office is closed. Contractor shall arrange for the regular telephone number to be listed in all telephone directories generally distributed in the City and on all Contractor's bills and invoices.

Contractor must ensure that telephone calls to it from locations within the City are billed as "local calls" by all telephone companies.

If City receives complaints that Customers are unable to reach Contractor's office by phone, or are subject to excessive waiting time "on hold" prior to reaching a customer service representative, City may require that Contractor install additional telephone lines.

**D. Correspondence.** Contractor shall respond to all written correspondence including all faxes and e-mail or other electronic correspondence from City or Customers within five (5) business days.

**E. Electronic Payment of Bills.** Contractor shall provide electronic access to Customers for the following: (i) Sign up for service, (ii) Changes to service, (iii) Discontinuation of service, and (iv) Payment of Bills.

**F. Maps, Schedules, Consumer Information.** Contractor shall furnish the City with maps and schedules for all Collection routes on or before February 15, 2014, and shall update such maps and schedules whenever a change occurs. Contractor shall have current maps and schedules available for inspection by the public at its business office. Contractor shall submit a new revised set of maps and schedules to City on May 1 of each year of the Term commencing May 1, 2015.

In addition, Contractor shall prepare brochures containing information about the Collection of MSW and Recyclable Materials including: schedules of Collections, curbside procedures, and other useful information. Contractor shall distribute such brochures to the occupants of all Residential Premises and Commercial and Business Establishments prior to April 15, 2014. Brochures shall be revised and immediately distributed if there is any material change in the information and, in any event, at least once each year of the Term, prior to May 1, commencing May 1, 2015. Information cards shall also be mailed to City residents or businesses upon request.

Contractor will submit drafts of the maps, schedules and brochures to City prior to distribution and will incorporate City's comments in the final version distributed to the public.

**8.05 Service Complaints.** Contractor shall be responsible for the prompt and courteous attention to, and prompt and reasonable resolution of, all Customer complaints relating to service and billing. Contractor shall record in a separate log, the format of which is approved by the City, all complaints, noting the name and address of complainant, date and time of complaint, nature of complaint, and nature and date of resolution. This complaint log shall be available for inspection by City. In addition,

Contractor shall compile a summary statistical table of the complaint log (or a copy of the log if requested by City) and submit the table, or copy, to City by the 20th day of each month, beginning in June 2014.

Contractor shall respond to all complaints from Customers within eight (8) working hours of its receipt of notice of the complaint. In particular, if a complaint involves a failure to collect MSW from a Premises as required by this Franchise, Contractor shall collect the MSW in question within such eight (8) working hour period, provided it has been placed for Collection in accordance with the City's Municipal Code. If the complaint is received after normal working hours, Contractor shall respond to the complaint within eight (8) working hours of the time Contractor's employees receive the complaint information (i.e. for a complaint left at 7:00 p.m. on a weekday, Contractor's employees would receive the complaint at 8:00 a.m. the following morning and would resolve the complaint before 4:00 p.m. the same day).

**8.06 Right to Terminate Service to a Premises.** The Contractor may suspend or terminate MSW Collection services provided to any Premises if the Owner or occupant thereof (or other party responsible for payment) is delinquent in payment of such bills.

Contractor will promptly notify City of its intention to suspend or terminate service to a Customer.

**8.07 Change in Collection Schedule.** Contractor shall obtain written approval from City prior to any change in Collection operations which results in a change in the day on which Collection occurs at Residential Premises. Contractor will comply with the requirements in Attachment B regarding notice to customers of changes in operations.

**8.08 Report of Accumulation of MSW or Unauthorized Dumping.**

Contractor shall direct its drivers to note: (i) the addresses of any Premises at which they observe that MSW is accumulating and is not being placed for Collection and (ii) the address, or other location description, at which MSW has been dumped in an apparently unauthorized manner. Contractor shall deliver the address or description to City within two (2) working days of such observation.



## **ARTICLE 9. RECORD KEEPING, REPORTING, INSPECTIONS AND AUDITS**

**9.01 General.** Contractor recognizes that maintenance of accurate and complete records of its operations and timely submission to City of accurate and complete reports is an essential aspect of the services to be provided by it under this Franchise.

**9.02 Record Keeping.** Contractor shall maintain accurate records of: (i) personnel, (ii) equipment, (iii) Collection operations, (iv) tonnages and Disposal used for MSW and Disposal of Residue from the following facilities: Clean MRF, Dirty MRF, Composting Facility, Food Scrap Processing Facility, Construction and Demolition Debris Processing Facility and Transformation Facility, (v) Diverted Tons of Recyclable Materials, Yardwaste, Food Scraps and Construction and Demolition Debris, (vi) customer service, (vii) billing and payment, (viii) sale of Recyclable Materials, Compost, Construction and Demolition materials, and any and all energy and Anaerobic Digestate produced by an Anaerobic Digestion Facility, (ix) financial matters, and (x) other matters in such detail and format necessary to compile the reports required by this Franchise, including all reports listed in Attachment K.

**9.03 Reporting.** Contractor shall compile and submit complete and accurate Monthly, Quarterly, and Annual reports required by this Franchise, including those listed in Attachment K, in the format and at the frequencies specified.

**9.04 Inspection by City.** The City shall have the right, but not the obligation, to observe and inspect all of the Contractor's operations involved in providing services under this Franchise to determine whether Contractor is performing in accordance with this Franchise and applicable laws and regulations. Contractor shall cooperate fully

with such inspections, including inspections and observations of operations at all Processing Facilities and Transformation Facilities. In connection therewith, the City shall have the right to enter any of Contractor's facilities, observe operations for an unlimited amount of time, photograph operations and record by both written and electronic media observations, measurements, and quality of Recovered Materials; speak to any of Contractor's employees and receive a response to any inquiries directed to such employees; and review and make copies (at City's expense), of all of Contractor's operational and business records related to this Franchise. If City so requests, Contractor shall make specified personnel available to accompany City employees on inspections. City's access to, and observation of activities and operations at each Processing Facility and at Transformation Facilities shall not be restricted or impaired in any way by Contractor.

City may periodically investigate Contractor's financial status to determine Contractor's financial capacity to continue to perform in accordance with this Franchise. Such investigations will be done at the sole expense of City, using such City employees or independent agents as City deems appropriate. Contractor will cooperate during such investigations and will make available for inspection such records as the City, or its agents or authorized personnel, may request.

Contractor shall maintain a complete roster of employees providing service under this Franchise. The roster shall contain the name, social security number, job classification and such other information as City may require. The City may inspect the roster, and make a copy thereof at its expense, at any time during business hours. City shall have the right to observe Containers of MSW and/or Recyclable Materials,

Yardwaste, Food Scraps, and Construction and Demolition Debris for the purpose of conducting waste audits as needed during the Term.

**9.05 Compliance Reporting.** Contractor shall submit monthly, quarterly and annual reports to the City documenting the disposition of MSW, Recyclable Materials, Compost, Food Scraps, Anaerobic Digestate, and energy produced by the Anaerobic Digestion Facility and shall format such reports so that they may be used by the City for City's compliance with the reporting requirements of the Act or any other subsequently enacted federal, state or local laws, rules, or regulations governing integrated waste management. All Contractor's reports are subject to audit by City, or by a third-party designated by City. The accuracy of all required reports to be submitted by Contractor are of paramount importance to City. Such reports show how Contractor is tracking and allocating diverted Tons, disposed Tons, residue Tons and Tons delivered to, and marketed from, Processing Facilities. The number of Tons diverted and disposed directly impacts both the City's Diversion rate as calculated by the Act, and the City's costs of Diversion and of compliance with the Act. Therefore, City may take all necessary steps and actions to audit, analyze and review any tonnage discrepancies or any other discrepancies, in Contractor's calculations, allocations, tonnage tracking and submitted documentation and records.

In the event that City discovers any material discrepancy in Contractor's reported Diversion or Tonnages, City will notify Contractor and Contractor shall have fourteen (14) calendar days to explain or otherwise resolve the discrepancy or discrepancies to the satisfaction of City. If there remains any doubt or question about the accuracy of Contractor's calculations, allocations, documentation or disposition of Tons of MSW,

Recyclable Materials, Yardwaste, Food Scraps, Construction and Demolition Debris or any other materials, City may undertake a detailed examination of all information, documentation, calculations and other data.

Contractor shall reimburse City's actual costs up to fifty thousand dollars (\$50,000) in each calendar year for such analysis, research, and review. Contractor shall cooperate fully with City's efforts and shall provide in a timely manner all additional City-requested documentation, information, and records (both electronic and hard copy) and shall provide access to all City requested documents and records both of Contractor and of the Processing Facilities used to process Tons Collected in City.

City will invoice Contractor for the actual cost of the additional tonnage and allocation review and Contractor shall pay the invoice within thirty (30) days of receipt. In the event that Contractor fails to pay City's invoice within thirty (30) days of receipt, the liquidated damages listed in Section 13.09 for late payment shall apply.

**9.06 Annual Route Audit.** Contractor shall conduct an annual audit, during the month of April of each year of this Agreement, of all Collection routes for MSW and Recyclable Materials including Yardwaste. The audit shall include, at a minimum: (i) the route number, (ii) identification number of vehicles servicing each route, (iii) number and type of accounts serviced by route and by truck, (iv) number and sizes of Containers collected together with the frequency of Collection by route and by truck, (v) weight of MSW collected, (vi) weights of Single-Material Recyclables, Single Stream Recyclable Materials, Yardwaste, Food Scraps, and SSC MRF Route materials (if directed by City) by route and by truck, and (vii) any pertinent operational details. Results of the route audit shall be delivered to City in their entirety, including, but not limited to, maps of

routes with each route numbered, survey sheets, logs, route lists, forms used to gather information, and other similar documents, within ten (10) working days of completion of the audit, and in no event later than May 20 of each year of the Term. The initial audit shall be performed in April 2015 with the report due by May 20, 2015. Said audit may be undertaken directly by Contractor or on behalf of Contractor by another party, but in either event shall be completed at Contractor's sole expense.

**9.07 Quarterly Diversion Allocation and Residue Audits at All City-Designated MRF's, Compost, Food Scrap Processing, Construction and Demolition Debris Processing, and Transformation Facilities.** Contractor shall conduct quarterly audits, during the months of February, May, August, and November of each year during the term of this Agreement to establish an allocation method for calculating diversion of Recyclable Materials from the waste stream that are processed at Processing Facilities. The procedure to be followed in conducting said audits at each Processing Facility is included in Attachment N. The final audit report shall be submitted to City no later than the 15<sup>th</sup> day of the month following the month of the audit (e.g. by March 15 for the February audit). The first quarterly audit shall be conducted in August 2014. City shall have the right to have City staff or City's representatives present during any of the audits. Contractor shall give City a minimum of fifteen (15) calendar days written notice of the date and time Contractor shall conduct the audit. The quarterly audits and the reports on same shall be prepared at Contractor's sole expense. The results of the allocation audit shall be put into use as of the first day of the month following submittal of the report to the City and approval of the report and

allocation method by City, and shall be used at all applicable Processing Facilities to allocate City's materials for Diversion.

**9.08 Annual City Review of Allocation Audit Procedures and Results.**

Each year of the Term, City shall have the right, but not the obligation, to conduct a review of the procedures used by Contractor to perform the allocation audits described in Section 9.07 and the results of said audits. If City desires to review the audit results and/or procedures, City will contact Contractor to schedule a meeting or series of meetings to discuss the procedures and results. At City's sole discretion, Contractor shall change the audit protocol, timing and frequency as directed by City and shall put such changes into effect with the next audit. City's review of audit procedures may include review of Contractor and Processing Facility records and on site visits to Contractors facilities and Processing Facilities. City's access to, and observation of activities and operations at each Processing Facility and at the Transformation Facility shall not be restricted or impaired in any way by Contractor.

**9.09 Reporting of Adverse Information.** Contractor shall provide the City three (3) copies (one to the Public Works Director, one to the City Manager and one to the City Attorney) of all reports, pleadings, applications, notifications, Notices of Violation, communications or other material relating specifically to Contractor's performance of services pursuant to this Franchise, submitted by Contractor to, or received by Contractor from, the United States, California Environmental Protection Agency, CalRecycle, the Securities and Exchange Commission or any other federal, state or local agency, including but not limited to any federal or state court. Copies shall be submitted to the City simultaneously with Contractor's filing or submission of such

materials with said agencies. Contractor's routine correspondence with said agencies need not be submitted to City, but shall be made available to the City promptly upon City's written request.

## **ARTICLE 10. INDEPENDENT CONTRACTOR**

**10.01 Contractor an Independent Contractor.** In the performance of services under this Franchise, the Contractor shall be, and is, an independent contractor, and is not an agent or employee of the City. Contractor has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all Persons assisting Contractor in the performance of Contractor's services hereunder. Contractor shall be solely responsible for all matters relating to the payment of its employees, including compliance with social security, withholding and all other regulations governing such matters, and shall be solely responsible for Contractor's own acts and those of Contractor's employees and other agents.

**10.02 No Partnership or Joint Venture Created.** Nothing in this Franchise shall be construed as creating a partnership or joint venture between the City and Contractor, or as giving the City a duty to supervise or control the acts or omissions of any Person performing services or work under the Franchise.

**10.03 No Entitlement to City Benefits.** Neither Contractor nor its officers, employees, agents or subcontractors shall be entitled to any retirement benefits, workers' compensation benefits or any other benefits which accrue to any City employees, and Contractor expressly waives any claim it may have to acquire to such benefits. Contractor agrees to defend and indemnify City for any claims brought by Contractor's employees against City for such benefits.



## **ARTICLE 11. INDEMNITY, INSURANCE, BOND**

**11.01 General Indemnification.** Contractor shall indemnify, defend and hold harmless City, its officers, employees and agents, from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit, of any and every kind and description, whether judicial, quasi-judicial or administrative in nature including, but not limited to, injury to and death of any person and damage to property or for contribution or indemnity claimed by third parties (collectively, the "Claims"), arising out of or occasioned in any way by, directly or indirectly, Contractor's performance of, or its failure to perform, its obligations under this Franchise. The foregoing indemnity shall not apply to the extent that the Claim is caused solely by the sole negligence or the intentional misconduct of City, its officers, employees or agents, but shall apply if the Claim is caused by the joint negligence of Contractor or other Persons. Upon the occurrence of any Claim, Contractor, at Contractor's sole cost and expense, shall defend (with attorneys reasonably acceptable to City) City, its officers, employees, and agents. Contractor's duty to indemnify and defend shall survive the expiration or earlier termination of this Franchise.

### **11.02 Insurance.**

**A. Types and Amounts of Coverage.** Contractor shall procure from an insurance company or companies licensed to do business in the State of California and shall maintain in force at all times during the Term the following types and amounts of insurance:

1. Workers' Compensation and Employer's Liability. Contractor

shall maintain workers' compensation insurance covering its employees in statutory amounts and otherwise in compliance with the laws of the State of California.

Contractor shall maintain employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000) per accident or disease. Contractor shall not be obligated to carry workers compensation insurance if (i) it qualifies under California law and continuously complies with all statutory obligations to self-insure against such risks; (ii) furnishes a certificate of Permission to Self Insure issued by the Department of Industrial Relations; and (iii) furnishes updated certificates of Permission to Self Insure periodically to evidence continuous self insurance.

2. Comprehensive General Liability (and Automobile Liability).

Contractor shall maintain comprehensive general liability insurance with a combined single limit of not less than Ten Million Dollars (\$10,000,000) per occurrence and Ten Million Dollars (\$10,000,000) annual aggregate covering all claims and all legal liability for personal injury, bodily injury, death, and property damage, including the loss of use thereof, arising out of, or occasioned in any way by, directly or indirectly, Contractor's performance of, or its failure to perform, services under this Franchise.

The insurance required by this subsection shall include:

- (i) Premises Operations (including use of owned and non-owned equipment);
- (ii) Products and Completed Operations (including protection against liability resulting from use of Recyclable Materials by another Person);
- (iii) Personal Injury Liability with employment exclusion deleted;

- (iv) Broad Form Blanket Contractual with no exclusions for bodily injury, personal injury or property damage (including coverage for the indemnity obligations contained herein);
- (v) Owned, Non-Owned, and Hired Motor Vehicles;
- (vi) Broad Form Property Damage.

The comprehensive general liability insurance shall be written on an “occurrence” basis (rather than a “claims made” basis) in a form at least as broad as the most current version of the Insurance Service Office commercial general liability occurrence policy form (CG0001). If occurrence coverage is not obtainable, Contractor shall arrange for “tail coverage” on a “claims made” policy to protect City from claims filed within four years after the expiration or termination of this Franchise relating to incidents that occurred prior to such expiration or termination. Any excess or umbrella policies shall be on a “following form” basis.

3. Pollution Liability. Contractor shall maintain contractor’s environmental liability insurance with limits in an amount of not less than One Million Dollars (\$1,000,000) per occurrence and annual aggregate covering claims for on-site, under-site, or off-site bodily injury and property damage and regulatory fines as a result of pollution conditions arising out of its operations under this Franchise.

4. Physical Damage. Contractor shall maintain comprehensive (fire and theft) physical damage insurance covering the vehicles and equipment used in providing service to City under this Franchise, with a deductible or self-insured retention not greater than One Hundred Thousand Dollars (\$100,000). The deductible limit may be increased by City with acceptable proof of self-insurance. Notwithstanding the foregoing, Contractor shall be allowed to self-insure for physical damage to its vehicles

provided Contractor provides adequate audited financial information to City and City is reasonably satisfied that Contractor has the financial net worth to cover any losses.

**B. Acceptability of Insureds.** The insurance policies required by this section shall be issued by an insurance company or companies admitted to do business in the State of California, subject to the jurisdiction of the California Insurance Commissioner, and with a rating in the most recent edition of Best's Insurance Reports of size category VIII or larger and a rating classification of A or better.

**C. Required Endorsements.** Without limiting the generality of Sections 11.02.A and B, the policies shall contain endorsements making the City and its officers, employees, and agents an additional insured, and shall further contain additional endorsements in substantially the following form:

1. Workers' Compensation and Employers' Liability Policy.

"Thirty (30) days prior written notice shall be given to the City of Lake Forest in the event of cancellation or non-renewal of this policy. Such notice shall be sent to:

CITY OF LAKE FOREST  
Office of the City Manager  
25550 Commercenter Drive, Suite 100  
Lake Forest, California 92630  
Attention: City Manager

"Insurer waives all right of subrogation against City and its officers and employees for injuries or illnesses arising from work performed for City."

2. Comprehensive General Liability Policy; Pollution Liability Policy.

"Thirty (30) days' prior written notice shall be given to the City of Lake Forest in the event of cancellation, reduction of coverage, or non-renewal of this policy. Such notice shall be sent to:

CITY OF LAKE FOREST  
Office of the City Manager  
25550 Commercenter Drive, Suite 100  
Lake Forest, California 92630  
Attention: City Manager

"This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by the City of Lake Forest, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."

"Inclusion of the City of Lake Forest as an insured shall not affect the City's rights as respects any claim, demand, suit or judgment brought or recovered against the Contractor. This policy shall protect Contractor and the City in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the company's liability as set forth in the policy beyond the amount shown or to which the company would have been liable if only one party had been named as an insured."

3. Physical Damage Policy.

Notice of cancellation, reduction in coverage or non-renewal, as provided in Section 11.02.

Cross liability endorsement, as provided in Section 11.02.

Waiver of subrogation against City.

**D. Delivery of Proof of Coverage.** No later than one hundred twenty (120) days before the commencement of operations (i.e., on or before December 31, 2013), Contractor shall furnish City one or more certificates of insurance on a standard ACORD form and required endorsements substantiating that each of the coverages and endorsements required hereunder are in force, in form and substance satisfactory to City. Such certificates shall show the type and amount of coverage, effective dates and dates of expiration of policies and shall be accompanied by all required endorsements.

If City requests, copies of each policy, together with all endorsements, shall also be promptly delivered to City in one complete package. Contractor shall furnish renewal certificates to City to demonstrate maintenance of the required coverages throughout the Term. Each year on or before the renewal date for all insurance policies required herein, Contractor shall deliver to City a new package containing all insurance certificates with all of the required endorsements and copies of all insurance policies required by this Franchise.

**E. Other Insurance Requirements.**

1. In the event performance of any service is delegated to a subcontractor, Contractor shall require such subcontractor to provide statutory workers' compensation insurance and employer's liability insurance for all of the subcontractor's employees engaged in the work. The liability insurance required by Subsection 11.02.A.2 shall cover all subcontractors or the subcontractor must furnish evidence of insurance provided by it meeting all of the requirements of this Section 11.02.

2. Contractor shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve Contractor from any obligation under this Franchise, including those imposed by Section 11.01. If any claim is made by any third Person against Contractor or any subcontractor on account of any occurrence related to this Franchise, Contractor shall promptly report the facts in writing to the insurance carrier and to the City.

3. If Contractor fails to procure and maintain any insurance required by this Franchise, City may take out and maintain, at Contractor's expense,

such insurance as it may deem proper and deduct the cost thereof from any monies due Contractor. Alternatively, the City may treat the failure as a Contractor Default.

4. City is not responsible for payment of premiums for or deductibles under any required insurance coverages.

**11.03 Faithful Performance Bond.** Not later than October 1, 2013, Contractor shall file with City a bond securing the Contractor's faithful performance of its obligations under this Franchise. The principal sum of the bond shall be One Million Dollars (\$1,000,000). The form of the bond shall be as set out in Attachment L. The bond shall be executed as surety by a corporation admitted to issue surety bonds in the State of California, regulated by the California Insurance Commissioner and with a financial condition and record of service satisfactory to City.

The term of the bond shall be not less than twelve (12) months, or until September 30, 2014, whichever occurs first. The bond shall be extended, or replaced by a new bond in the same principal sum, for the same term (i.e., twelve (12) months) and in the same form, annually thereafter. Not less than ninety (90) days before the expiration of the initial bond, the Contractor shall furnish either a replacement bond or a continuation certificate substantially in the form attached as Attachment M, executed by the surety.

It is the intention of this Section 11 that there be in full force and effect at all times a bond securing the Contractor's faithful performance of the Franchise, throughout its Term.

**11.04 Alternative Security.** City may, in its sole discretion, allow Contractor to provide alternative security in the amount set forth in Section 11.03, in the form of (a) a prepaid irrevocable standby letter of credit in form and substance satisfactory to City and approved by the City Attorney and issued by a financial institution acceptable to City, or (b) a certificate of deposit in the name of the City with a term satisfactory to City and with a financial institution acceptable to City.

**11.05 Hazardous Waste Indemnification.**

A. Without regard to any insurance coverage or requirements, and without limiting the above general indemnification obligation in any way, Contractor specifically agrees to and shall, to the maximum extent permitted by law, defend (with counsel acceptable to City) reimburse, indemnify, and hold City and its past and present officers, council members, employees, consultants and agents (hereinafter "Indemnified Parties") harmless from and against any and all claims, actions, liabilities, damages, demands, judgments, losses, costs, liens, expenses, suits, actions, attorneys' fees, consultant fees, penalties and any and all other losses, damages, fees and expenses of whatever kind or nature ("Claims") (including but not limited to response costs, investigative costs, assessment costs, monitoring costs, treatment costs, cleanup costs, removal costs, remediation costs, and similar costs, damages and expenses) that arise out of or are alleged to arise out of or in any way relate to any action, inaction or omission of Contractor that:

1. Results in any demand, claim, notice, order, or lawsuit, asserting that any Indemnified Party is liable, responsible or in any way obligated to



investigate, assess, monitor, study, test, treat, remove, remediate, or otherwise cleanup, any Hazardous Waste (as defined herein); or

2. Relates to material collected, transported, recycled, processed, treated or disposed of by Contractor.

**B.** Contractor's obligations pursuant to this section shall apply, without limitation, to:

1. Any Claims brought pursuant to or based on the provisions of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 9601 et seq., the California Hazardous Substances Account Act (California Health & Safety Code Sections 25300 et seq.), the California Hazardous Waste Control Laws (California Health & Safety Code Sections 25100 et seq.), the California Porter-Cologne Act (California Water Code Section 13000 et seq.), and any and all amendments and regulations thereto, and any other Federal, State, regional or local environmental statutory or regulatory provision;

2. Any Claims based on or arising out of or alleged to be arising out of the ownership, use, lease, sale, design, construction, maintenance or operation of Contractor of any facility;

3. Any Claims based on or arising out of or alleged to be arising out of the marketing, sale, distribution, storage, transportation, Disposal, processing or use of any materials recovered by Contractor;

4. Any Claims based on or arising out of or alleged to be arising out of any breach of any express or implied warranty, representation or covenant arising out of or in connection with this Franchise.

**C.** The foregoing indemnity and defense obligations shall apply irrespective of the negligence or willful misconduct of Contractor or any Affiliate of Contractor.

**D.** For purposes of this Franchise, the term "Hazardous Waste" shall mean any "hazardous material," as that term is defined under California Health & Safety Code Section 25501(1); any "hazardous substance, " as that term is defined herein or under California Health & Safety Code Sections 25281(f), 25501(e), 25501.1 and under Title 42, Section 9601(14) of the United States Code; any "Hazardous Waste," as that term is defined under Title 42, Section 6093(5) of the United States Code and under California Health & Safety Code Section 2550(m); any chemical which the Governor has identified as a chemical known to the State to cause cancer or reproductive toxicity pursuant to California Health & Safety Code Section 25249.8; any crude oil or refined or unrefined petroleum product or any fraction or derivative thereof; and any asbestos or asbestos-containing material. The term "Hazardous Waste" shall also include any and all amendments to the above-referenced statutory and regulatory provisions made before or after the date of execution of this Franchise.

**E.** The provisions of this section shall not terminate or expire, shall be given the broadest possible interpretation and shall survive the expiration or earlier termination of this Franchise.

**11.06 Integrated Waste Management Act Indemnification.** The parties agree that Contractor's implementation of all programs in Attachment B is vital to the City's compliance with the Act. Therefore, Contractor agrees to indemnify and hold harmless the Indemnitees against all fines and/or penalties imposed by CalRecycle: (i) based on Contractor's failure to comply with laws, regulations or permits issued or enforced by CalRecycle or the City; (ii) caused or contributed to by the Contractor's failure to perform its obligations under this Franchise, including, but not limited to, implementation of all programs in Attachment B in the timeframes required. This indemnity obligation is subject to the limitations and conditions in Public Resources Code Section 40059.1 but is enforceable to the maximum extent allowable by that Section. In the event that CalRecycle imposes penalties, fees and/or sanctions against City, Contractor shall, in addition to paying the fines and penalties, pay all City's costs and fees for staff time, consultants, attorneys and all other costs of defending and resolving the issue of CalRecycle issuing fines, penalties and/or sanctions against City.

## **ARTICLE 12. COMPENSATION TO CONTRACTOR**

**12.01 General.** Contractor shall perform the services required by this Franchise in consideration for: (i) the right to charge customers the rates set forth on Attachment D as they may be adjusted as provided in this Article, and (ii) the right to retain all revenues, if any, from the sale of Recyclable Materials, Yardwaste, Food Scraps (including revenue from creation, sale and use of energy) and Construction and Demolition Debris. The revenues received from these two sources shall be the full, entire and complete compensation due to Contractor for all labor, equipment, materials and supplies, taxes, insurance, bonds, overhead, profit and all other things necessary to perform all the services required by this Franchise in the manner and at the times prescribed. City shall not be obligated to make any payments to Contractor under this Franchise, including payments to compensate Contractor for delinquent or uncollectible amounts charged to Customers.

**12.02 Initial Rates.** The rates which Contractor may charge for services provided commencing May 1, 2014 shall be those set forth in Attachment D. These rates shall not be changed for the first fourteen (14) months of the Term, i.e., until July 1, 2015 and shall be quoted as May 2014 dollars. Rates are established to incentivize waste Generators to Divert as much MSW as possible in order to reduce their monthly collection bill. The initial rates are established to provide Collection of Single Stream Recyclable Materials and Single-Material Recyclable Materials at Business and Commercial Establishments at a cost that is fifty percent (50%) less than MSW Collection service.

If there is a service that Contractor believes it is required to provide and for which there is no City-approved rate in Attachment D, Contractor shall notify City. The City may, in its sole discretion, establish a rate for the new service, following completion of any proceedings required under Article 13D, Section 6, of the California Constitution or other applicable law. Unless and until City establishes a rate for such service, Contractor shall not provide nor charge for the service. City shall have no obligation or duty to establish a rate for such service.

**12.03 Annual Rate Adjustments.** The rates for service as set forth in Attachment D shall be adjusted as of July 1, 2015 and as of July 1 for each ensuing year of the Term (including any extensions pursuant to Section 6.08) in accordance with Attachment J, following completion of the proceedings required under Article 13D, Section 6 of the California Constitution, and contingent upon the City not receiving a majority protest against the rate increase as part of such proceedings.

**12.04 Disposal Charge (Tip Fee) Adjustments.** If the tip fee charged at Orange County Landfills (or whatever City designated Disposal Site is then in use) is changed (increased or decreased) for whatever reason including, but not limited to, new or increased taxes or regulatory fees, the Disposal portion of the rates shall be adjusted according to the instructions provided in Attachment J, following completion of the proceedings required under Article 13D, Section 6 of the California Constitution, and contingent upon the City not receiving a majority protest against the rate increase as part of such proceedings. Disposal Charges are a pass through cost and Contractor shall not be entitled to receive or charge any profit, markup, overhead or administrative costs on Disposal Charges.

**12.05 Franchise Fee.** In consideration of the rights granted to Contractor hereunder, and in order to offset the City's costs in administering this Franchise including, but not limited to, planning, monitoring, and implementation of additional Diversion programs, additional public education on Diversion programs, technical consulting assistance on solid waste, recycling and other related issues, preparation of any studies required by the City or by CalRecycle related to compliance with the Act, preparation of required reports and documentation under the Act, monitoring of Contractor's performance under this Franchise, and any other City costs related to compliance with the Act, Contractor shall pay to the City a fee equal to five percent (5%) of Contractor's gross revenues derived from providing services under this Franchise (the "Franchise Fee"). Contractor shall remit the Franchise Fee monthly, within 30 days of the end of the calendar month for which the Franchise Fee is paid. Any overpayment to the City through error or otherwise shall be offset against the next payment due from Contractor without interest. Acceptance by the City of any payment due under this paragraph shall not be deemed to be a waiver by the City of any breach of this Agreement, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due, or from collecting any balance due to the City. In case of dispute between the City and Contractor regarding any amounts due, Contractor shall pay the undisputed portion of the amount claimed by the City as due and notify the City in writing at the time of payment as to any payment that is paid under protest, specifying the basis of its claim of overpayment. In addition, City may, in its sole discretion, increase the Franchise Fee at any time during the Term, by approving a commensurate increase in the rates set forth in Attachment D that is

over and above the increases described in Sections 12.03, 12.04, 12.07 and 12.08. If City chooses to increase the Franchise Fee in this manner City shall notify Contractor in writing of the amount of the change, and the effective date of the change.

**12.06 Late Fees.** If the Franchise Fee is not paid on time as described in Section 12.05 the Contractor shall pay City a late fee, and not as interest, in an amount equal to ten percent (10%) of the amount owing for that month. Contractor shall pay an additional ten percent (10%) late fee for each additional thirty (30) day period that any amount of the Franchise Fee or both, remains unpaid. Contractor agrees that the late fees described herein reasonably reflect the City's costs to process delinquency calculations and notices, and to monitor the Contractor's services, all in an effort to collect delinquent Franchise Fees which, together with all other remedies afforded City under this Franchise (including any award of attorney's fees and costs), and in accordance with applicable laws, are intended to compensate City in any collection efforts in the event of Contractor's default in the payment of the Franchise Fee.

**12.07 Adjustments to Rates Based on City-Directed Changes In Scope of Work.** If the City has directed a change in the scope of work under Section 4.12 and either party believes that such change will increase or decrease the costs of providing service, the party which believes the rates should be adjusted shall, within thirty (30) calendar days after issuance of the notice of scope change, submit to the other party a proposed adjustment with complete supporting documentation of the cost calculations therein, and the parties shall thereafter meet and discuss the matter. City may request additional documentation, calculations and other information from Contractor in order to analyze information submitted by Contractor, or in order to make its own internal

calculations of the cost change. Once the parties have formulated a cost adjustment, the City Council shall review the proposed adjustment and in the City Council's sole discretion, make the determination as to the appropriate amount of the adjustment. No adjustment will be made to reflect impacts on Contractor's profits arising from changes in the scope of work, only changes in Contractor's costs.

NOTE: The work to be performed by Contractor, including the scope of work in Attachment B, includes optional tasks and programs that City, in its sole discretion, may choose to implement during the Term. Contractor has provided City with rates (in Attachment D) to be charged to Customers for all of the optional tasks and programs in Attachment B. If City chooses to implement any of those program(s), the provisions of this Section 4.12 and this Section 12.07 shall not apply. Instead, the rate(s) for said program(s) shall be adjusted for the passage of time as described in Attachment J, following completion of the proceedings required under Article 13D, Section 6 of the California Constitution, and contingent upon the City not receiving a majority protest against the rate increase as part of such proceedings. The revenue from such rates, plus the revenue from sale of any Recyclable Materials, Diverted materials and any energy produced shall constitute the full and complete compensation to Contractor for implementing such program(s).

**12.08 Payment of AB 939 Waste Reduction Fee.** Concurrent with executing this Agreement, and on or about July 1 each year thereafter, Contractor shall pay to City the sum of \$40,000 to reimburse City for its costs in implementing the mandate of AB 939 (the "AB 939 Fee"). Commencing with the payment due in 2015 and continuing thereafter until the end of the term of the Agreement, the AB 939 Fee shall be increased



annually in an amount equal to the amount derived by multiplying (A) the previous AB 939 Fee by (B) the percentage increase in the Los Angeles-Riverside-Orange County Average Consumer Price Index for “All Urban Consumers” published by the Bureau of Labor Statistics during the most recent 12 month period for which data for this index is available. If the Bureau of Labor Statistics ceases publication of this index, City may select another index to serve as the basis of the calculation.

**12.09 Other Fees.** The City shall have the right to establish other fees and to collect such fees from Contractor, as City deems necessary in City's sole discretion. The amount, time and method of payment will be established similar to that described in Section 12.05. City shall provide Contractor with written notice of the establishment of any new fees along with the corresponding change in rates and remittance schedule.

## **ARTICLE 13. DEFAULT AND REMEDIES**

**13.01 Events of Default.** Each of the following shall constitute an event of default ("Contractor Default") hereunder:

**A.** (i) Contractor fails to perform its obligations under Articles 4, 5, 6 or 7 of this Franchise and the failure to perform is not cured within two (2) business days after receiving notice from the City specifying the breach; or (ii) in the case of any other breach of this Franchise, the breach continues for more than fifteen (15) calendar days after written notice from the City for the correction thereof.

**B.** There is a seizure or attachment of, or levy affecting possession of, the operating equipment of Contractor, including without limitation, its vehicles, maintenance or office facilities, of such proportion as to substantially impair Contractor's ability to perform under this Franchise, and which is not released, bonded or otherwise lifted within two (2) business days.

**C.** There is any termination or suspension from any cause (including labor unrest such as strike, work stoppage or slowdown, sickout, picketing, or other concerted job action) of the Contractor's ability to collect MSW, Recyclable Materials, Yardwaste, Food Scrap or Construction and Demolition Debris for more than five (5) business days.

**D.** Contractor files a voluntary case for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or shall consent to the appointment of or taking of possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of Contractor for any part

of Contractor's operating assets or any substantial part of Contractor's operating assets or any substantial part of Contractor's property used to provide service to City pursuant to this Franchise, or shall make any general assignment for the benefit of Contractor's creditors, or shall fail generally to pay Contractor's debts as they become due or shall take any action in furtherance of any of the foregoing.

**E.** A court having jurisdiction enters a decree or order for relief in respect of the Franchise, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or Contractor consents to or fails to oppose any such proceeding, and such proceeding shall remain undismissed or unstayed for a period of ninety (90) days or any such court enters a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Contractor or for any part of the Contractor's operating equipment or assets, or orders the winding up or liquidation of the affairs of the Contractor.

**F.** Contractor fails to timely furnish an initial bond, or fails to furnish a replacement bond or a continuation certificate of the existing bond prior to expiration of the performance bond, as required by Section 11.03 of the Franchise, or Contractor fails to maintain all required insurance coverages in force at all times. The default shall occur immediately upon such failure without any necessity for notice from City of the breach. City shall have the right to give notice of termination under Section 13.02 immediately upon such default. Notwithstanding any other provision of this Agreement to the contrary, Contractor shall not be entitled to an opportunity to cure any default comprising the failure to maintain all required insurance and/or the required bond.

**G.** Contractor fails to provide reasonable assurance of performance required under Section 14.10.

**H.** A representation or warranty contained in Article 2 proves to be false or misleading in a material respect as of the date such representation or warranty was made.

**I.** Contractor falsifies tonnage reports or provides information that is materially misleading in any report or documentation provided to the City.

**J.** Contractor fails to honor any of its indemnity obligations herein.

**K.** Contractor, or any of its officers or employees is convicted of a felony in connection with performance of this Franchise.

**L.** Contractor is found to have violated the Act, any Environmental Law, or any permit, order or rule of any regulatory agency in connection with Contractor's performance of this Franchise and such finding has become final and not subject to further appeal.

**13.02 Right to Suspend or Terminate Upon Default.**

**A.** Upon any Contractor Default, City shall have the right to suspend or terminate this Franchise, in whole or in part. Such suspension or termination shall be effective thirty (30) days after City has given notice of suspension or termination to Contractor, except that such notice may be effective immediately if the Contractor Default is one which endangers the health, welfare or safety of the public. Notice may be given orally in person or by telephone to the representative of Contractor designated

in or under Section 14.06 (or, if he/she is unavailable, to a responsible employee of Contractor) and shall be effective immediately. Written confirmation of such oral notice of suspension or termination shall be sent by personal delivery, facsimile, or other expedited means of delivery to Contractor within twenty-four (24) hours of the oral notification. Contractor shall continue to perform the portion of the Franchise not suspended, in full conformity with its terms.

**B.** City will also have the right to suspend or terminate this Franchise, upon the same notice provisions, if Contractor's ability to perform is prevented or materially interfered with by a cause which excuses nonperformance under Section 14.12, despite the fact that nonperformance in such a case is neither a breach nor default by Contractor.

**13.03 Specific Performance.** By virtue of the nature of this Franchise, the urgency of timely, continuous and high-quality service, the lead time required to effect alternative service, and the rights granted by City to Contractor, the remedy of damages for a breach hereof by Contractor is inadequate, and the City shall be entitled to injunctive relief to require Contractor to perform its obligations herein.

**13.04 Use of Contractor Property Upon Default.** In the event that Contractor fails to perform any of its obligations under Articles 4, 5, 6 or 7 and fails to perform such work within two (2) business days after notice from City, City shall have the right to use any of Contractor's land, equipment, facilities and other property reasonably necessary for the provision of services hereunder and the billing and collection of fees for those services. The City shall have the right to continue use of such property until other

suitable arrangements can be made for the provision of such services, which may include the award of a contract to another service provider.

**13.05 Right to Perform.** If this Franchise is suspended and/or terminated due to a Contractor Default, City shall have the right to perform and complete, by contract or otherwise, the work herein or such part thereof as it may deem necessary and to procure labor, equipment, and materials and incur all other expenses necessary for completion of the work and services provided for herein. If such expenses exceed the amounts which would have been payable to Contractor under this Franchise if it had been fully performed by Contractor, then Contractor shall pay the amount of such excess to City.

**13.06 Payment for Use of Contractor's Property.** If the City invokes its rights to use Contractor's equipment, facilities, and other property pursuant to Section 13.04, and such use continues after the period of time for which Contractor has already been paid, Contractor shall be entitled to the reasonable rental value of such property, which shall be offset against the damages due the City as a result of Contractor's Default. Contractor agrees that it will fully cooperate with the City to effect the City's use of such property. The City may immediately engage all or any personnel necessary for the provision of services, including, if the City so desires, employees previously employed by Contractor. Contractor further agrees, if the City so requests, to assist the City in securing the services of any or all management or office personnel employed by Contractor whose skills are reasonably necessary for the continuation of services. The City agrees that it assumes complete responsibility for the proper, normal use of such equipment and facilities while in its possession. Contractor agrees that the City's

exercise of its rights under this section: (i) does not constitute a taking of private property for which compensation must be paid; (ii) will not create any liability on the part of the City to Contractor other than the payment of reasonable rental value as provided for in this subsection; (iii) does not exempt Contractor from the indemnity provisions of Article 11 which are meant to extend to circumstances arising under this Section.

**13.07 Damages.** Contractor shall be liable to City for all direct and consequential damages arising out of Contractor's Default. This section is intended to be declarative of existing California law. The City may offset such damages against sums which would otherwise be due to Contractor.

**13.08 City's Remedies Cumulative.** City's rights to suspend or terminate the Franchise under Section 13.02, to obtain specific performance under Section 13.03, to cure under Section 13.04 and to perform under Section 13.05 are not exclusive, and City's exercise of one such right shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies that the City may have, including a legal action for damages, including incidental, consequential and/or special damages under Section 13.07.

**13.09 Liquidated Damages.** The parties acknowledge that consistent, courteous and efficient Collection of MSW, Recyclable Materials, Yardwaste and Construction and Demolition Debris is of utmost importance and City has considered and relied on Contractor's representations as to its quality of service commitment in entering into this Franchise. The parties further recognize that quantified standards of performance are necessary and appropriate to ensure consistent and reliable service. The parties further recognize that if Contractor fails to achieve the performance

standards, City and its residents will suffer damages and that it is and will be impracticable and extremely difficult to ascertain and determine the exact amount of damages that City will suffer. Therefore, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Franchise, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and anticipation that proof of actual damages would be costly or inconvenient. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party had ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision at the time that this Franchise was made.

Contractor Initial Here: \_\_\_\_\_

City Initial Here: \_\_\_\_\_

Contractor agrees to pay to City (as liquidated damages and not as a penalty) the amount set forth below, all of which shall be adjusted upward annually using the procedure and calculations set forth in Section 12.03 herein and Attachment J:

**A. Collection Reliability.**

1. For each failure to commence service to a new customer account within seven calendar (7) days after order, in excess of five (5) such failures annually: ..... \$150.00
2. For each failure to collect MSW, Recyclable Materials, or Yardwaste which has been properly set out for Collection, from an established customer account, on the scheduled Collection day, in excess of five (5) such failures annually: ..... \$150.00
3. For each failure to collect MSW, Recyclable Materials, or Yardwaste which has been properly set out for



Collection, from the same customer on two (2)  
consecutive scheduled pick up days:..... \$150.00

**B. Collection Quality.**

1. For each occurrence of damage to private property which is not corrected to the satisfaction of the property owner within thirty (30) days and which exceed five (5) such occurrences annually:..... \$250.00
2. For each failure to properly return any empty container to avoid pedestrian or vehicular traffic impediments or to place any Cart in an upright position with lid securely closed, in excess of five (5) such occurrences annually: ..... \$150.00
3. For each occurrence of discourteous behavior to a customer:..... \$250.00
4. For each occurrence of excessive noise:..... \$500.00
5. For each failure to clean up MSW, Recyclable Materials or Yardwaste spilled from Containers, in excess of five (5) such failures annually: ..... \$150.00
6. For each occurrence of collecting MSW, Recyclable Materials or Yardwaste during unauthorized hours, in excess of five (5) such occurrences annually: ..... \$500.00
7. For each failure to conform to the requirements of Sections 7.03.D.2, Cleaning; 7.03.D.3, Painting; 7.03.D.4, Maintenance; 7.03.D.8, Brake Inspections; 7.03.E, Operation; 7.04.C, Cleaning, Painting and Maintenance of Contractor-Furnished Containers; 7.05.B, Driver Qualifications; and 7.05.C, Uniforms, which exceed in any one or a combination of categories above five (5) such occurrences annually: .... \$150.00

**C. Responsiveness to Customer.**

1. For each failure to initially respond to a customer complaint within eight (8) working hours:..... \$100.00
2. For each failure to carry out responsibilities for establishing service: ..... \$500.00

3. For each failure to conform to the litter abatement requirements of Section 4.10: ..... \$250.00
4. For each failure to prepare recycling plan per Section 3.05.2 of Attachment B within 7 days of Customer or City request..... \$100.00

**D. Timeliness of Submissions to City.**

Any report required to be submitted to City by Contractor pursuant to this Agreement shall be considered late until such time as a correct and complete report is received by City. For each calendar day a report is late, the daily liquidated damage amount shall be:

1. Monthly report..... \$100.00 per day
2. Quarterly report..... \$250.00 per day
3. Annual report ..... \$500.00 per day
4. Annual Diversion Report including calculations and supporting documentation ..... \$500.00 per day

**E. Accuracy of Billing.**

Each customer billing that is not prepared in accordance with City's approved schedule of rates: ..... \$250.00

**F. Recycling Coordinators.**

Each day City does not receive services of two (2) Recycling Coordinators (excluding coordinators holiday, vacation and sick leave days) including any day that City determines that either of the Recycling Coordinators is performing work for any entity that is unrelated to the duties of the coordinator described herein: ..... \$500.00

**G. Alternative Fuel Vehicles.**

Each day Contractor fails to have in service Alternative Fuel Vehicles as required by Article 7: ..... \$500.00

**H. Compliance Reporting Audit.**

Each day, after the due date on City invoice, Contractor fails to reimburse City for audit as described in Section

9.05: ..... \$250.00

City may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees, agents or representatives or through investigation of customer complaints.

Prior to assessing liquidated damages, City shall give Contractor notice of its intention to do so. The notice will include a brief description of the incident(s)/non-performance. Contractor may review (and make copies at its own expense) all non-confidential information in the possession of the City relating to incident(s)/non-performance. Contractor may, within ten (10) days after receiving the notice, request a meeting with the City Manager or his or her designee. Contractor may present evidence in writing and through testimony of its employees and others relevant to the incident(s)/non-performance. The City Manager or his or her designee will provide Contractor with a written explanation of his or her determination on each incident(s)/non-performance prior to authorizing the assessment of liquidated damages. The decision of the City Manager or his or her designee shall be final.

**I. Amount.** The City may assess liquidated damages for each calendar day or event, as appropriate, that Contractor is determined to be liable in accordance with this Franchise.

**J. Payment.** Contractor shall pay any liquidated damages assessed by City within ten (10) days after they are assessed.

City's right to recover liquidated damages for Contractor's failure to meet the service performance standards shall not preclude City from obtaining equitable relief for persistent failures to meet such standards nor from terminating the Franchise for such persistent failures.

**13.10 City Default.** City shall be in default under this Franchise ("City Default") in the event City commits a material breach of the Franchise and fails to cure such breach within thirty (30) days after receiving notice from the Contractor specifying the breach, provided that if the nature of the breach is such that it will reasonably require more than thirty (30) days to cure, City shall not be in default so long as City promptly commences the cure and diligently proceeds to completion of the cure.

In the event of a City Default Contractor shall continue to perform all of its obligations hereunder until a court of competent jurisdiction has issued a final judgment declaring that there is a City Default.

## **ARTICLE 14. OTHER AGREEMENTS OF THE PARTIES**

**14.01 Compliance with Law; Non-Discrimination.** In providing the services required under this Franchise, Contractor shall at all times comply with all applicable laws of the United States, the State of California and City, with all applicable rules and regulations promulgated by federal, state, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended during the Term and with all permits affecting the services to be provided. Contractor shall not discriminate nor permit discrimination against any Person in a manner prohibited by federal or state law.

**14.02 Assignment.** Contractor acknowledges that this Franchise involves rendering a vital service to the City's residents and businesses, and that the City has selected Contractor to perform the services specified herein based on: (i) Contractor's experience, skill and reputation for conducting their operations in a safe, effective and responsible fashion, and (ii) Contractor's financial resources to maintain the required equipment and services and to support its indemnity obligations to the City under this Franchise. The City has relied on each of these factors, among others, in choosing Contractor to perform the services to be rendered by Contractor under this Franchise.

**A. City Consent Required.** Contractor shall not assign its rights or delegate or otherwise transfer its obligations under this Franchise to any other Person without the prior written consent of City. Any such assignment made without the consent of City shall be void and the attempted assignment shall constitute a Contractor Default.

**B. Assignment Defined.** For the purpose of this Section, “assignment” shall include, but not be limited to: (i) a sale, exchange or other transfer to a third party of substantially all of Contractor’s assets dedicated to service under this Franchise; (ii) a sale, exchange or other transfer of outstanding common stock of Contractor, to a third party which results in a change of control of Contractor; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or reissuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction which results in a change of ownership or control of Contractor; (iv) any assignment by operation of law, including insolvency or bankruptcy, an assignment for the benefit of creditors, a writ of attachment for an execution being levied against this Franchise, appointment of a receiver taking possession of Contractor’s property, or transfer occurring in the event of a probate proceeding; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership, or change of control of Contractor.

**C. Consent Requirements.** If Contractor requests City’s consideration of and consent to an assignment, City may deny or approve such request in its complete discretion. No request by Contractor for consent to an assignment need be considered by City unless and until Contractor has met the following requirements:

1. Contractor shall undertake to pay City its reasonable expenses for consultants, attorneys’ fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment;

2. Contractor shall furnish City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years;

3. Contractor shall furnish City with satisfactory proof: (i) that the proposed assignee has at least ten (10) years of solid waste/recycling management experience on a scale equal to or exceeding the scale of operations conducted by Contractor; (ii) that in the last five (5) years, the proposed assignee has not been the subject of any administrative or judicial proceedings initiated by a federal, state or local agency having jurisdiction over its operations due to an alleged failure to comply with federal, state or local laws or that the proposed assignee has provided City with a complete list of such proceedings and their status; (iii) that the proposed assignee conducts its operations in a safe and environmentally conscientious manner, in accordance with sound waste management practices in full compliance with all federal, state and local laws regulating the Collection and Disposal of MSW and all Environmental Laws; (iv) of any other information required by City to ensure the proposed assignee can fulfill the terms of this Franchise in a timely, safe and effective manner.

**14.03 Subcontracting.** Contractor shall not engage any subcontractors to perform any of the services required of it by this Franchise without the prior written consent of City. Contractor shall notify the City no later than ninety (90) days prior to the date on which it proposes to enter into a subcontract. City may approve or deny any such request in its sole discretion.

Contractor may, in cases of emergency, engage subcontractors for up to seven (7) consecutive calendar days. Contractor shall give prompt notice to City of any such emergency subcontracting and any such engagement must be approved by City in writing if it is to extend beyond seven (7) calendar days, or if Contractor wishes to renew it after an interval of less than thirty (30) calendar days.

**14.04 No Affiliated Entity.** Contractor will not form or use any Affiliated Entity to perform any of the services or activities which Contractor is required or allowed to perform under this Franchise, other than as a subcontractor approved by City under Section 14.03.

**14.05 Contractor's Investigation; No Warranties by City.** Contractor has made an independent investigation, satisfactory to it, of the conditions and circumstances surrounding the Franchise and the work to be performed by it, and the Recycling and Source Reduction programs now in effect in the City.

Contractor has carefully reviewed the information in the Request for Proposals and Addenda, if any and the Source Reduction and Recycling Element adopted by the City under the Act.

While City believes that the information contained in the Request for Proposals and any Addenda is substantially correct, City makes no warranties in connection with this Franchise, including but not limited to the accuracy or completeness of the information contained in the Request for Proposals and any Addenda. The City also expressly disclaims any warranties, either express or implied, as to the merchantability or fitness for any particular purpose of Recyclable Materials, Yardwaste, Food Scraps and Construction and Demolition Debris to be collected pursuant to this Franchise.



**14.06 Notice.** All notices, demands, requests, proposals, approvals, consents and other communications which this Franchise requires, authorizes or contemplates shall, except as provided in Section 13.02, be in writing and shall either be personally delivered to a representative of the parties at the address below or be deposited in the United States mail, first class postage prepaid (certified mail, return receipt requested), addressed as follows:

If to City:           City Manager  
                          City of Lake Forest  
                          25550 Commercenter Drive, Suite 100  
                          Lake Forest, California 92630

with a copy to the Lake Forest City Attorney at the same address

If to Contractor: \_\_\_\_\_

A notice given in accordance with this Section may change the address to which communications may be delivered from time to time.

**14.07 Representatives of the Parties.**

**A. Representatives of City.** References in this Franchise to “City” shall mean the Lake Forest City Council and all actions to be taken by City shall be taken by the City Council except as provided below. The City Council may delegate, in writing, authority to the City Manager, and/or to other City officials and may permit such officials, in turn, to delegate in writing some or all of such authority to subordinate officers. Contractor may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

**B. Representatives of Contractor.** Contractor shall, by the Effective Date, designate in writing a responsible officer who shall serve as the representative of Contractor in all matters related to the Franchise and shall inform City in writing of such designation and of any limitations upon his or her authority to bind Contractor. City may rely upon action taken by such designated representative as actions of Contractor unless they are outside the scope of the authority delegated to him/her by Contractor as communicated to City.

**14.08 Right to Inspect Contractor Operations.** City shall have the right, but not the obligation, to observe and inspect all of the Contractor's operations under this Franchise. In addition, upon reasonable notice and without interference with Contractor's operations, City may review and copy any of Contractor's operational and business records related to this Franchise. If City so requests, Contractor shall make specified personnel available to accompany City employees on inspections and shall provide electronic copies of records stored in electronic media.

**14.09 Maintenance and Review of Records, Submission of Reports.** Contractor shall compile, on a daily basis, accurate records of its operations in sufficient detail to allow for accurate determinations of all matters that require periodic determination under this Franchise. City shall have the right during regular business hours to review and make copies of (at City's expense) any documents relevant to this Franchise, including, but not limited to, Contractor's billing and collection records, tonnage reports, route lists, maps and records maintained in electronic, magnetic and other media.

Contractor shall prepare and submit complete, accurate and timely reports on forms provided or approved by City as described in Attachment K.

**14.10 Right to Demand Assurances of Performance.** If Contractor: (i) persistently suffers the imposition of liquidated damages under Section 13.09; (ii) is the subject of any labor unrest including work stoppage or slowdown, sickout, picketing or other concerted job action; (iii) appears in the reasonable judgment of City to be unable to regularly pay its bills as they become due; or (iv) is the subject of a civil or criminal proceeding brought by a federal, state, regional or local agency for violation of an Environmental Law, City may, at its option and in addition to all other remedies it may have, demand from Contractor reasonable assurances of timely and proper performance of this Franchise, in such form and substance as the City may require.

**14.11 Right of City to Permit and Franchise For Collection By Third Parties.** Pursuant to Public Resources Code Section 40105, City designates Contractor as City's Authorized Recycling Agent. However, the parties acknowledge and agree that it is of vital importance to City that the Diversion programs described in Attachment B be implemented according to the timelines contained therein. Therefore if Contractor fails to achieve the minimum level of program implementation, as described herein, then the parties acknowledge and agree that from and after the date of such failure the City may (without Contractor's approval) permit, authorize, allow, invite and/or contract with entities other than Contractor to collect, Recycle, Process and/or Dispose of Residue from Recyclable Materials, Yardwaste, and Food Scraps generated at Commercial and Business Establishments, Multi-family complexes and at other

Premises, regardless of whether or not the customer pays for the Collection and Recycling of such materials.

The minimum required level of program implementation that must be completed by Contractor on or before December 31, 2016 is as follows: (a) Contractor must have deployed and be Collecting, Processing and Diverting Single Stream and/or Single-Material Recyclables from a minimum of two hundred (200) Bins at Commercial and Business Establishments that were not deployed as of the May 2014 baseline established pursuant to Section 6.08; and (b) have deployed Food Scrap Carts and/or Bins and be Collecting, Processing and Diverting Food Scraps at a minimum of fifty (50) restaurants that were not participating in the Food Scrap Diversion Program as of the May 2014 baseline established pursuant to Section 6.08.

On or before February 28, 2017 City will notify Contractor as to whether or not Contractor has met the minimum required level of implementation. In the event Contractor has not met the minimum required level of implementation, City may, in City's sole discretion, permit, authorize, allow, invite and/or contract with entities other than Contractor to Collect, Recycle, Process and/or Dispose of Residue from Recyclable Materials, Yardwaste, and Food Scraps generated at Commercial and Business Establishments, Multi-family complexes and at any other Premises. City may, in addition, invoke the provisions of Section 4.12 (City's Right to Change Scope of Work) and eliminate work task(s) and/or program(s) from Contractor's scope of work. In such event Contractor shall cease providing the specified work task(s) and/or program(s) on the date(s) specified by City and shall, from that date forward, not charge Customers for provision of any of the specified work task(s), program(s) or service(s).

Contractor shall not impair, impede or in any way frustrate or otherwise interfere with third party performance of and ability to successfully provide Collection, Recycling, Processing and/or Disposal of Residue from of Recyclable Materials, Yardwaste, and Food Scraps generated at Commercial and Business Establishments, Multi-family complexes and at any other Premises within City. Such third parties may be directed by City to bill and collect payment from Customers they provide services to, independent of Contractor's billing and collection of payments from Customers.

Failure of Contractor to comply with the provisions of this Section shall constitute an event of Contractor default and shall be grounds for termination of this Franchise.

**14.12 Force Majeure.** Neither party shall be in default of its obligations under this Franchise in the event, and for so long as, it is impossible or extremely impracticable for it to perform its obligations due to an "act of God" (including, but not limited to, flood, earthquake or other catastrophic events), war, insurrection, riot, or other similar cause not the fault of, and beyond the reasonable control of, the party claiming excuse (each, a "Force Majeure event"). The following are not force majeure events: labor unrest, picketing, strikes, work stoppage or slowdown, sickouts or other concerted job actions. A party claiming excuse under this Section must (1) have taken reasonable precautions, if possible, to avoid being affected by the cause, and (2) notify the other party in writing within five (5) calendar days after the occurrence of the event specifying the nature of the event, the expected length of time that the party expects to be prevented from performing, and the steps which the party intends to take to restore its ability to perform. The party claiming excuse under this Section shall use its best efforts to remedy its inability to perform as quickly as possible.

**A. Force Majeure.** Neither Contractor nor the City shall be excused from the performance of its obligations under this Franchise except where a party's failure to perform is due to a Force Majeure event, as defined in this Franchise.

**B. Obligation to Restore Ability to Perform.** Any suspension of performance by a party pursuant to this Section shall be only to the extent, and for a period of no longer duration than, required by the nature of the event, and the party claiming excuse from obligation shall use its best efforts in an expeditious manner to remedy its inability to perform, and mitigate damages that may occur as result of the event.

**C. Notice.** The party claiming excuse shall deliver to the other party a written notice of intent to claim excuse from performance under this Franchise by reason of a Force Majeure event. Notice required by this Section shall be given promptly in light of the circumstances, but in any event not later than five (5) calendar days after the occurrence of the Force Majeure event. Such notice shall describe in detail the claimed Force Majeure event, the services impacted by the claimed Force Majeure event, the expected length of time that the party expects to be prevented from performing, the steps which the party intends to take to restore its ability to perform, and such other information as the other party reasonably requests.

**D. City's Rights in the Event of Force Majeure.** The partial or complete interruption or discontinuance of Contractor's services caused by a Force Majeure event shall not constitute an event of default under this Franchise. Notwithstanding the foregoing: (i) the City shall have the right to make use of

Contractor's facilities and equipment in accordance with Sections 13.04 and 13.06 of this Franchise in the event Contractor is unable to collect and dispose of MSW as required herein for a period of three (3) or more consecutive days or for any three (3) days in a seven (7) calendar-day period, and such non-performance is excused by a Force Majeure event; (ii) if Contractor's excuse from performance for reason of Force Majeure continues for a period of thirty (30) calendar days or more, the City shall have the right, in its sole discretion, to immediately terminate this Franchise; and (iii) if Contractor's inability to collect and dispose of MSW continues for fourteen (14) days or more from the date by which Contractor gave or should have given notice under Subsection C above, the City may terminate this Franchise.

**14.13 Cooperation During Transition.** At the expiration or earlier termination of the Term, Contractor shall cooperate fully with the City to ensure an orderly transition to any and all new service providers. In addition, during the last twelve months of the Term, Contractor shall allow prospective operators to observe its operations and shall make available to City all records and reports required to be submitted by this Franchise for use in the transition including, but to limited to, complete route lists and maps, customer account lists including customer name, address, type and frequency of service, billing information, and number, type and location of all Containers deployed by Contractor within City.

**14.14 No Damages for Invalidity of Franchise.** If a final judgment of a court of competent jurisdiction determines that this Franchise, or any portion thereof, is illegal or was unlawfully entered into by the City, neither party shall have any claim against the other for damages of any kind (including but not limited to loss of profits) on any theory.

**14.15 Diversion Programs Not Restricted.** Nothing in this Franchise shall restrict City's participation or non-participation, or the nature or extent of its participation in, any Recycling and Diversion program, developed or operated by City, other agencies, or by one or more residents, businesses, commercial, industrial or retail operators, or other Persons, within City or other jurisdictions.

**14.16 Reports as Public Records.** The reports, records and other information submitted (or required to be submitted) by Contractor to City are public records within the meaning of that term in the California Public Records Act, Government Code Section 6250 *et seq.* Unless a particular record is exempted from disclosure by the California Public Records Act, it must be disclosed to the public by the City upon request.



## **ARTICLE 15. MISCELLANEOUS PROVISIONS**

**15.01 Governing Law.** This Franchise shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

**15.02 Jurisdiction.** Any lawsuits between the parties arising out of this Franchise shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits. With respect to venue, the parties agree that this Franchise is made in and will be performed in Orange County and the exclusive venue is the Superior Court located in Orange County.

**15.03 Binding on Successors.** The provisions of this Franchise shall inure to the benefit of and be binding on the successors and permitted assigns of the parties.

**15.04 Parties in Interest.** Nothing in this Franchise is intended to confer any rights on any Persons other than the parties to it and their permitted successors and assigns.

**15.05 Waiver.** The waiver by either party of any breach or violation of any provisions of this Franchise shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision. The subsequent acceptance by either party of any monies that become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other party of any provision of this Franchise.

**15.06 Attachments.** Each of the attachments, identified as Attachments "A" through "BB," is attached hereto and incorporated herein and made a part hereof by this reference.

**15.07 Entire Agreement.** This Franchise, including the Attachments, represents the full and entire agreement between the parties with respect to the matters covered herein and supersedes all prior negotiations and agreements, either written or oral.

**15.08 Section Headings.** The article headings and section headings in this Franchise are for convenience of reference only and are not intended to be used in the construction of this Franchise nor to alter or affect any of its provisions.

**15.09 Interpretation.** This Franchise shall be interpreted and construed reasonably and neither for nor against either party, regardless of the degree to which either party participated in its drafting.

**15.10 Amendment.** This Franchise may not be modified or amended in any respect except by a writing signed by the parties.

**15.11 Severability.** If a court of competent jurisdiction holds any non-material provision of this Franchise to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Franchise which shall be enforced as if such invalid or unenforceable provision had not been contained herein.

**15.12 Costs and Attorneys' Fees.** The prevailing party in any action brought to enforce the terms of this Franchise or arising out of this Franchise may recover its reasonable costs expended in connection with such an action from the other party. However, each party shall bear its own attorneys' fees.

**15.13 References to Laws.** All references in this Franchise to laws, rules, and regulations shall be understood to include such laws, rules, and regulations as they may be subsequently amended or recodified, unless otherwise specifically provided. In addition, references to specific governmental agencies shall be understood to include agencies that succeed to or assume the functions they are currently performing.

**15.14 City's Municipal Code.** Contractor is aware of the provisions of City's Municipal Code relating to the Collection and Disposal of solid waste, specifically Title 16 (Integrated Waste Management) of the Lake Forest Municipal Code, including the right of City to amend those provisions. Contractor shall comply with all provisions of Title 16, as they may be amended.

City may, in its sole discretion, determine whether and in what circumstances enforcement of provisions of the City's Municipal Code relating to the obligation of owners and occupants of Premises to use the services of Contractor is in the public interest. City undertakes no obligation, by virtue of this Franchise, to Contractor to enforce such provisions through civil actions, or termination of other utility services provided by City.

The parties acknowledge that City may permit the Collection, Recycling, Diversion and/or Disposal of any or all of the following materials without seeking or securing any approval of Contractor:

**A.** Recyclable Materials and/or Food Scraps separated from MSW by the Customer which the Customer sells, or for which he/she is otherwise compensated in a manner resulting in a net payment to the Customer;

**B.** MSW, Recyclable Materials which is removed from any Premises by the property owner or occupant, and which is transported by the property owner or occupant (or by his or her full-time employees) to a processing or Disposal facility, or Food Scraps which are removed by the property owner or occupant and composted;

**C.** MSW self-hauled pursuant to Section 16.02.015 of the Lake Forest Municipal Code;

**D.** Recyclable Materials which are separated by the Customer and donated to youth, civic, or charitable organizations;

**E.** Recyclable Materials not placed for Collected by Contractor which are delivered to a permitted recycling drop off or buy-back center or facility;

**F.** Containers delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act, Section 14500, *et seq.*, California Public Resources Code;

**G.** Construction and Demolition Debris;

**H.** Yardwaste removed from a Premises by a gardening, landscaping or tree trimming company utilizing its own equipment as an incidental part of a total service offered by the company rather than as a hauling service;

**I.** The casual or emergency Collection and Disposal of MSW by City employees in the normal course of their employment; and

**J.** Animal waste and remains from butcher shops and grease collected from restaurants for use as tallow; and

**K.** Hazardous Waste, regardless of the source.

**L.** Cleanup services such as 1 800 GOTJUNK and OC Junk Removal, whose primary business is the cleanup of MSW on the property of another and who, incidental to such business: (a) hauls only the MSW which he/she cleans up and no other MSW; (b) performs cleanup services such as removing junk from Commercial and Business Establishments, garages and Residential Premises, but does not remove MSW from Construction and Demolition sites; (c) uses his/her own vehicle to haul the MSW which he/she cleans up; and (d) does not use a Bin, Roll Off Box or other Container, whether or not such Bin, Roll Off Box or Container is left at the cleanup site, to accomplish the cleanup, Collection or transportation of the MSW.

**15.15 Non-Discrimination.** Contractor shall not discriminate, nor permit any City-approved subcontractor to discriminate, in the provision of services or the employment of Persons engaged in the performance of this Franchise on account of race, color, religion, sex, age, national origin, ancestry, physical handicap, sexual orientation, marital status or medical condition in violation of any applicable federal, state or local law.

**15.16 Guaranty.** No later than ten (10) days before the Effective Date of this Franchise, Contractor shall furnish a properly executed Guaranty of its performance under this Franchise, in the form of Attachment Z.

**15.17 Compliance With Immigration Laws.** Contractor shall comply with all immigration laws in the performance of this Franchise.

This Franchise, consisting of one hundred eighteen (118) pages, not including Attachments A through BB shall be executed in four (4) originals.

IN WITNESS WHEREOF, City and Contractor have executed this Franchise as of the day and year first above written.

CONTRACTOR

CITY OF LAKE FOREST

By: \_\_\_\_\_

By: \_\_\_\_\_  
Scott Voigts, Mayor

ATTEST:

CITY CLERK

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM

By: \_\_\_\_\_  
City Attorney

## **Attachments**

A	Definitions
B	Detailed Scope of Work for Collection And Diversion Operations
C	Implementation Plan
D	Proposed Rates to be Charged
E	Numbers and Types of Containers to be Furnished by Contractor and Cart Specifications
F	Collection Vehicles to be Furnished by Contractor
G	Contractor-Furnished Personnel
H	Cost-Saving Innovations to Operations to be Implemented by Contractor
I	City Landfill Contract With County of Orange
J	Annual Rate and Disposal Cost Adjustments
K	Reports to be Submitted to City
L	Performance Bond
M	Bond Continuation Certificate
N	Protocol for Conducting Quarterly Audits
O	Materials Recovery Processing Facilities – Clean MRF
P	Materials Recovery Processing Facilities – Dirty MRF (if Contractor is directed to implement SSC MRF Route)
Q	Compost Processing Facilities
R	Food Scrap Processing Facilities
S	Construction & Demolition Debris Processing Facilities
T	Transformation Facilities (if applicable)
U	Planned Residential and Commercial Developments
V	Detailed Monthly Reporting Format
W	Contractor's Detailed Description of Diversion Programs
X	Contractor's Proposed Annual Diversion By Program/PARIS Code (In the Order Presented in Table 1 in Section 1.6 of Attachment B)
Y	Contractor's Complete Proposal To City
Z	Guaranty
AA	Minimum Required Duties of Recycling Coordinators
BB	Annual Diversion Rate Percentage Calculation